

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL ACTION NUMBER: 1:17CR51

JAMES L. LAURITA, JR.

Defendant.

TRIAL - DAY 4 & 5

Proceedings had in the Trial of the above styled action
on February 1 and 2, 2018 before The Honorable Irene M.
Keeley, Senior Judge, at Clarksburg, West Virginia.

APPEARANCES:

FOR THE PLAINTIFF: JAROD J. DOUGLAS, ESQUIRE
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The defendant was present in person.

Proceedings recorded by stenomask, transcript produced by
official court reporter.

LINDA L. BACHMAN, CCR, CVR-M, OFFICIAL COURT REPORTER
P.O. BOX 969, CLARKSBURG, WEST VIRGINIA 26302-0969
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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(No Witnesses Called)

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1 P R O C E E D I N G

2 (02-01-2018, 9:00 o'clock a.m., defendant present)

3 THE COURT: Good morning, Ladies and Gentlemen. I
4 am advised that Juror Number Nine has called in ill and that
5 we'll therefore be replacing Juror Number Nine with
6 Alternate Number One. Any comment or objection from the
7 Government?

8 MR. DOUGLAS: No, Your Honor.

9 MR. CARR: No. Your Honor.

10 THE COURT: All right. Thank you. All right. we
11 can bring the jury in.

12 (Jury in 9:02 a.m.)

13 THE COURT: You may be seated. Good morning,
14 Ladies and Gentlemen. Welcome back for the charge and
15 closing arguments in the case. Before we get underway I
16 need to advise you that Juror Number Nine has called in this
17 morning and has advised that she is ill and will not be able
18 to sit this morning. I therefore instruct Alternate Number
19 One, Ms. Bennett, to come and to replace Juror Number Nine.

20 Thank you very much.

21 All right, Ladies and Gentlemen, you have in front of
22 you a document, many pages that is styled the Charge, the
23 Jury Charge in the case. I am about to read this to you.
24 That is my responsibility but you have it in front of you so
25 that you may follow along and because this belongs to you,

1 you may take notes on it, you may underline, you may circle,
2 you may do whatever you want to it. This is your charge and
3 when you go back to the jury room to deliberate the case you
4 will have the charge with you. All right.

5 You have the evidence, and I must now instruct you as to
6 the law applicable to this case. The final arguments of
7 counsel will follow these instructions and, Ladies and
8 Gentlemen, we will have a brief recess between my reading of
9 the charge and your hearing the closing arguments.

10 As you know, the trial function of the judge is to
11 preside in such manner that proper and relevant evidence is
12 presented, and to instruct the jury on the law applicable to
13 the case.

14 Your function as the jury, on the other hand, is to
15 determine the fact from a fair consideration of the evidence
16 presented the case not from anything else. The evidence
17 should be considered and viewed by you in the light of your
18 own observations and experience in the ordinary affairs of
19 life.

20 You have been chosen and sworn as jurors in this case to
21 try the issues of fact presented by the allegations of the
22 indictment as to the defendant, James L. Laurita, Jr., and
23 the denial made by his not guilty plea to each count of the
24 indictment. You are to perform this duty without bias or
25 prejudice to any party. The law does not permit you to be

1 governed by conjecture, suspicion, surmise, sympathy,
2 speculation, prejudice or, public opinion, nor may your
3 verdict be based on any of these things. The defendant and
4 the public expect that you will carefully and impartially
5 consider all the evidence in the case, and follow the law as
6 stated by the Court.

7 As I earlier indicated to you, an indictment is but a
8 formal method of accusing a defendant of a crime. As you
9 know, an indictment is not evidence of any kind against the
10 defendant. It does not create any presumption or permit any
11 inference of guilt. It is merely the formal means by which
12 the Government accuses an individual of a crime in order to
13 bring him to trial. The defendant has answered the charges
14 in this case by pleading not guilty and you must not be
15 prejudiced against him.

16 There are two types of evidence from which you may find
17 the truth as to the facts of a case -- direct evidence and
18 circumstantial evidence.

19 Direct evidence is the testimony of one who asserts
20 actual knowledge of a fact, such as an eyewitness.

21 Circumstantial evidence is proof of a chain of facts and
22 circumstances indicating some further fact which, in a
23 criminal case, may bear on the guilt or innocence of a
24 defendant.

25 The law makes no distinction between the weight to be

1 given to either direct or circumstantial evidence. Nor is a
2 greater degree of certainty required of circumstantial
3 evidence than of direct evidence.

4 Any evidence as to which an objection was sustained by
5 the Court, and any evidence ordered stricken by the Court,
6 must be entirely disregarded.

7 Unless you are otherwise instructed, anything you may
8 have read, heard, or seen outside the courtroom is not
9 evidence, and must be entirely disregarded.

10 You are to consider only the evidence in the case. But
11 in your consideration of the evidence, you are not limited
12 to the bald statements of the witnesses. In other words,
13 you are not limited solely to what you saw and heard as the
14 witnesses testified. You are permitted to draw, from facts
15 which you find have been proven, such reasonable inferences
16 as you believe are justified in the light of experience.

17 As I have also indicated to you, the unsworn statements
18 and arguments of counsel during opening statement and
19 closing argument are not evidence in the case. They are
20 intended only to assist the jury in understanding the
21 evidence and the contentions made.

22 Further, no statement, ruling, question, remark or
23 comment which I have made during the course of the trial was
24 intended to indicate my opinion as to how you should decide
25 the case or to influence you in any way in your

1 determination of the facts, nor should you draw any
2 inferences from anything I may have said. You alone are to
3 judge for yourselves the questions of fact in this case.

4 In resolving these issues, you must bear in mind that,
5 under the law of our land, the defendant, James L. Laurita,
6 Jr., is presumed to be innocent -- and this presumption of
7 innocence remains with him at every stage of the trial.
8 Thus, the defendant, although accused, begins the trial with
9 a clean slate -- with no evidence against him. The
10 presumption of innocence alone is sufficient to acquit a
11 defendant, unless you are satisfied beyond a reasonable
12 doubt of his guilt after careful and impartial consideration
13 of all the evidence in the case.

14 In this case, as in every criminal case, the burden of
15 proof is upon the United States to establish, first, the
16 fact that the crime charged was committed and second, that
17 the defendant on trial is guilty of the commission of the
18 particular crime as charged, beyond a reasonable doubt.

19 This burden never shifts to the defendant, but remains
20 upon the United States throughout the trial.

21 You should weigh all the evidence in the case. After
22 weighing all the evidence, if you are not convinced of the
23 guilt of the defendant beyond a reasonable doubt, you must
24 find him not guilty.

25 A reasonable doubt means in law just what the words

1 imply, namely, a doubt based upon reason and common sense.
2 Its meaning is self-evident and I will not attempt to define
3 the term further.

4 It is not necessary for the Government to prove the
5 exact location of the commission of an alleged offense. It
6 is sufficient if the evidence in the case establishes beyond
7 a reasonable doubt that the offense was committed within the
8 Northern District of West Virginia.

9 You will note also that the indictment charges that the
10 offense was committed on or about a certain date. The proof
11 need not establish with certainty the exact date of the
12 alleged offense. It is sufficient if the evidence in the
13 case establishes beyond a reasonable doubt that the offense
14 was committed on a date reasonably near the date alleged.

15 Although the indictment charges that some of the
16 statutes in question were violated by various acts that are
17 joined in the indictment by the word and, it is sufficient
18 for a finding of guilt if the evidence establishes beyond a
19 reasonable doubt any one of the violations charged.
20 In other words, counts charged using the word and should be
21 read as if they were charged using the word or. For
22 example, if a count were to allege that a defendant violated
23 a statute by hitting someone and kicking them, it would be
24 sufficient for a finding of guilt if you found that the
25 defendant either hit or kicked him. However, you must

1 unanimously agree that the defendant committed at least one
2 of the acts, and which act was committed.

3 In order to sustain its burden of proof on any of the
4 counts in the indictment, it is not necessary for the
5 Government to prove that the defendant personally did every
6 act constituting the offense charged.

7 As a general rule, if a defendant willfully causes an
8 act to be done by a third party that, if directly performed
9 by him, would be a crime, he is treated as if he had
10 committed the crime directly himself. In other words, if
11 the defendant caused someone else - for example an innocent
12 intermediary - to perform some act by aiding, counseling,
13 commanding, inducing, or procuring the other person's
14 conduct, the law holds him responsible for that conduct just
15 as if it had been personally done by him. It is not
16 necessary that the third party - that is, the person or
17 persons who actually performed the act - acted unlawfully
18 for you to find the defendant guilty.

19 The term material will be used frequently throughout
20 these instructions and the meaning is important in
21 understanding the law. A material fact or matter is one
22 that has a natural tendency to influence or be capable of
23 influencing the decision maker to whom it was addressed. A
24 material fact is a fact that would be of importance to a
25 reasonable person in making a decision about a particular

1 matter or transaction.

2 As you recall from my preliminary instructions to you,
3 you as jurors are the sole judges of the credibility of the
4 witnesses and the weight their testimony deserves.

5 You are not required to accept testimony, even though
6 the testimony is uncontradicted and the witness is not
7 impeached.

8 You should carefully consider each witness'
9 intelligence, motive, state of mind, and demeanor and manner
10 while on the stand. Consider also any relation each witness
11 may bear to either side of the case, the manner in which
12 each witness might be affected by the verdict; and the
13 extent to which, if at all, each witness is either supported
14 or contradicted by other evidence in the case.

15 Inconsistencies or discrepancies in the testimony of a
16 witness, or between the testimony of different witnesses,
17 may or may not cause the jury to discredit such testimony.
18 Two or more persons witnessing an incident or a transaction
19 may see or hear differently; an innocent misrecollection,
20 like failure of recollection, is not an uncommon experience.
21 In weighing the effect of a discrepancy, always consider
22 whether it pertains to a matter of importance or an
23 unimportant detail, and whether the discrepancy results from
24 innocent error or intentional falsehood.

25 In addition, the testimony of a witness may be

1 discredited or impeached by showing that he or she
2 previously made statements that are inconsistent with his or
3 her present testimony. As a general rule, earlier
4 contradictory statements are admissible only to impeach the
5 credibility of the witness, and not to establish the truth
6 of those statements.

7 If a witness is shown to have knowingly testified
8 falsely concerning any material matter, or conducted himself
9 or herself in a manner that indicates a propensity to lie,
10 or involves some element of deceit or untruthfulness, you
11 have the right to distrust the testimony of that witness in
12 other particulars, and you may reject all the testimony of
13 that witness or give it such credibility as you may think it
14 deserves.

15 In this connection, the weight of the evidence is not
16 necessarily determined by the number of witnesses
17 testifying. Rather, you should consider all the facts and
18 circumstances in evidence to determine which of the
19 witnesses are worthy of greater credence or believability.

20 the testimony of a Government agent is entitled to no
21 special or exclusive sanctity. A Government agent who takes
22 the witness stand subjects his or her testimony to the same
23 examination and the same tests that any other witness does.
24 You should recall their demeanor on the stand, their manner
25 of testifying, the substance of their testimony, and weigh

1 and balance it just as carefully as you would the testimony
2 of any other witness. People employed by the Government,
3 including law enforcement agents, do not stand in any higher
4 station in the community than other persons, and their
5 testimony is not entitled to any greater weight than that of
6 other witnesses.

7 You have heard evidence that the defendant committed
8 certain acts which may be similar to acts charged in the
9 indictment. You may not consider this evidence in deciding
10 if the defendant committed the acts charged in the
11 indictment. However, you may consider this evidence for
12 other, very limited purposes, such as: to prove the
13 defendant had a motive or the opportunity to commit the
14 crimes charged in the indictment; to prove the defendant had
15 the state of mind or intent necessary to commit the crimes
16 charged in the indictment; to prove the defendant acted
17 according to a plan or in preparation to commit the crimes
18 charged in the indictment; to prove the defendant knew what
19 he was doing when he committed the crimes charged in the
20 indictment; to prove the defendant's identity; and to prove
21 that the defendant did not commit the crimes charged in the
22 indictment by accident or mistake.

23 Do not conclude from this evidence that the defendant
24 has bad character in general or that because the defendant
25 may have committed other similar acts that it is more likely

1 that he committed the crimes with which he is currently
2 charged.

3 As I stated in my preliminary instructions to you, the
4 law does not compel a defendant in a criminal case to take
5 the witness stand and testify. Once a defendant, such as
6 James L. Laurita, Jr., waives his right to remain silent and
7 testifies, however, as is the case here, you should judge
8 his testimony in the same manner as you judge the testimony
9 of any other witness.

10 You are to return your verdict based upon the
11 evidence--upon the basis of the evidence with which--which
12 was presented to you at the trial and in accordance with
13 these instructions that I am in the process of giving to
14 you. If the evidence in the case convinces you beyond a
15 reasonable doubt that a defendant is guilty of the offenses
16 charged in the indictment, then it will be your duty to find
17 the defendant guilty of those counts.

18 On the other hand, if a reasonable doubt exists in your
19 mind concerning the guilt of a defendant as to the offenses
20 charged in the indictment, then it will be your duty to find
21 that defendant not guilty of those counts.

22 I caution you, members of the jury, that you are here to
23 determine whether the Government has proved or failed to
24 prove the guilt of the defendant, James L. Laurita, Jr., as
25 to the charges set forth in the indictment. The defendant

1 is not on trial for any act or conduct or offense not
2 alleged in the indictment. Neither are you called upon to
3 return a verdict as to the guilt or innocence of any other
4 person or persons not on trial as a defendant in this case.

5 The punishment provided by law for the offenses charged
6 in the indictment is a matter which should never be
7 considered by the jury in any way in arriving at an
8 impartial verdict as to the guilt or innocence of the
9 defendant.

10 You, as jurors, are the judges of the facts. But in
11 determining what actually happened in this case -- that is,
12 in reaching your decision as to the facts -- it is your
13 sworn duty to follow the law I am now in the process of
14 defining for you.

15 You must follow all of my instructions as a whole. You
16 have no right to disregard or give special attention to any
17 one instruction, or to question the wisdom or correctness of
18 any rule that I may state to you. That is, you must not
19 substitute your own notion or opinion as to what the law is
20 or ought to be. It is your duty to apply the law as I give
21 it to you, regardless of the consequences.

22 By the same token it is also your duty to base your
23 verdict solely upon the testimony and evidence in the case,
24 without prejudice or sympathy. That was the promise you
25 made and the oath you took before being accepted by the

1 parties as jurors in this case, and they have the right to
2 expect nothing less.

3 Ladies and Gentlemen, I will now provide you
4 instructions relating to the specific charges in the
5 indictment.

6 Count One charges that: The defendant, James L.
7 Laurita, Jr., was the president, chief executive officer,
8 and minority owner of Mepco, LLC, a Delaware limited
9 liability company with its principal office address located
10 in Morgantown, West Virginia.

11 Mepco, LLC was a wholly owned subsidiary of a
12 partnership consisting of the defendant and Longview
13 Intermediate Holdings C, LLC.

14 Federal Candidate I was a candidate for election and
15 re-election to the United States House of Representatives.

16 Committee A was the authorized federal campaign
17 committee formed to receive campaign contributions for the
18 election and re-election of Federal Candidate I.

19 Federal Candidate 2 was a candidate for election and
20 re-election to the United States Senate.

21 Committee B was the authorized federal campaign
22 committee formed to receive campaign contributions for the
23 election and re-election of Federal Candidate 2.

24 Federal Candidate 3 was a candidate for election and
25 re-election to the United States House of Representatives or

1 the United States Senate.

2 Committee C1 and Committee C2 were the authorized
3 federal campaign committees formed to receive contributions
4 for the election and re-election of Federal Candidate 3.

5 Federal Candidate 4 was a candidate for election to the
6 United States House of Representatives.

7 Committee D was the authorized federal campaign
8 committee formed to receive contributions for the election
9 of Federal Candidate 4.

10 The Federal Election Campaign Act of 1971, as amended,
11 Title 42, United States Code, Sections 30101 through 30146,
12 the Election Act, placed limits and reporting requirements
13 upon financial activity intended to influence the election
14 of candidates for federal office for the purpose of
15 combating both corruption and the appearance of corruption.

16 To limit the influence that any one person could have on
17 the outcome of a federal election, the Election Act
18 established limits on the amounts individuals may contribute
19 to any candidates authorized campaign committee.

20 For the 2010 federal election cycle running from
21 November 2008 to November 2010, the Election Act limited
22 both primary and general election campaign contributions to
23 twenty-four hundred dollars each, for a total of forty-eight
24 hundred dollars from any individual to any one candidate in
25 the election cycle.

1 For the 2012 federal election cycle running from
2 November 2010 to November 2012, the Election Act limited
3 both primary and general election campaign contributions to
4 twenty-five hundred dollars each for a total of five
5 thousand dollars from any individual to any one candidate in
6 the election cycle.

7 For the 2014 federal election cycle running from
8 November 2012 to November 2014, the Election Act limited
9 both primary and general election campaign contributions to
10 two thousand six hundred dollars each, for a total of five
11 thousand two hundred dollars from any individual to any one
12 candidate in the election cycle.

13 To prevent individuals from evading the limit on amounts
14 that an individual could contribute to an authorized
15 campaign committee, the Election Act prohibited a person
16 from making a political contribution in the name of another
17 person, including giving or reimbursing funds to a conduit
18 contributor, also known as a straw contributor, for the
19 purpose of having the conduit contributor pass the funds on
20 to a federal candidate in the name of a conduit contributor.

21 The Federal Election Commission was an agency and
22 department of the United States with jurisdiction to enforce
23 the limits and prohibitions of the Election Act, and to
24 receive and publish truthful and accurate information from
25 authorized campaign committees specifying the source and

1 amounts of contributions to those committees for publication
2 on the Internet to provide citizens with a transparent
3 record of contributions to candidates for federal office,
4 which anyone may examine as a basis for further inquiry, and
5 thereby instill public confidence that the electoral process
6 has not been corrupted.

7 From on or about March 5, 2010, on or about July 15,
8 2013, in the Northern District of West Virginia and
9 elsewhere, in a matter within the jurisdiction of the FEC, a
10 department or agency of the United States Government, the
11 defendant, James L. Laurita Jr. did knowingly and willfully
12 cause the falsification, concealment, and cover up by trick,
13 scheme, and device of a material fact.

14 In or about March 2010, the defendant, aware of the
15 legal limits on individual campaign contributions, knowingly
16 devised a scheme and plan whereby he would unlawfully use
17 employees of Mepco, LLC and their respective spouses as
18 conduits through which to funnel the money of Mepco, LLC to
19 Committee A, Committee B, Committee C1, Committee C2,
20 Committee D, and other federal campaign committees, in the
21 names of the conduits.

22 It was part of the scheme and plan to knowingly conceal
23 from the FEC, the committees, the federal candidates, and
24 the public the true source and amount of the campaign
25 contributions.

1 It was part of the scheme and plan to use conduits to
2 knowingly deceive the federal candidates and the committees
3 into believing that the candidate (sic) lawfully raised
4 significant contributions of money for the committees from
5 the conduits when in truth and fact, he had not.

6 It was part of the scheme and plan to cause the various
7 committees to file reports with the FEC falsely stating that
8 the conduits had made the contributions, when in truth and
9 in fact, as the defendant will knew, each contribution was
10 made by himself with funds of Mepco, LLC.

11 In Execution of the scheme, the defendant, James L.
12 Laurita, Jr. committed, and caused others to commit, the
13 following acts and others, in the Northern District of West
14 Virginia, and elsewhere.

15 On or about March 5, 2010, the defendant met with a
16 number of employees of Mepco, LLC and advised them that he
17 would begin to direct them and their spouses to make
18 contributions to campaign committees selected by him in
19 amounts specified by him, and that the money of Mepco, LLC
20 would be used to fund these contributions.

21 On or about March 9th, 2010, the defendant caused Mepco,
22 LLC to advance funds to the conduit employees of Mepco, LLC
23 via direct deposit wire transfers from the bank account of
24 Mepco, LLC.

25 In or about March 2010, the defendant directly and

1 indirectly solicited employees of Mepco, LLC to have their
2 spouses make contributions to Committee A, in amounts
3 specified by the defendant and using the funds of Mepco,
4 LLC, which the defendant had caused to be advanced to the
5 employees.

6 On or about March 9, 2010, the defendant caused the
7 spouse of a Mepco, LLC employee to make a contribution to
8 Committee A in the amount of approximately five hundred
9 dollars, which the defendant had caused to be funded from
10 Mepco, LLC money.

11 In or about June 2010, the defendant directly and
12 indirectly solicited employees of Mepco, LLC, and their
13 spouses, to make contributions to Committee A in amounts
14 specified by the defendant and using the funds of Mepco,
15 LLC, which the defendant had caused to be advanced to the
16 employees.

17 On or about June 25, 2010, the defendant caused Mepco,
18 LLC employee--a Mepco, LLC employee and his spouse to each
19 make a contribution to Committee A in the amount of
20 approximately one thousand dollars, which the defendant had
21 caused to be funded from Mepco, LLC money.

22 In or about August 2010, the defendant directly and
23 indirectly solicited employees of Mepco, LLC to make
24 contributions to Committee B, in amounts specified by the
25 defendant and using the funds of Mepco, LLC, which the

1 defendant had caused to be advanced to the employees.

2 On or about August 16, 2010, the defendant caused
3 Mepco--or caused a Mepco, LLC employee to make a
4 contribution to Committee B in the amount of approximately
5 one thousand dollars, which the defendant had caused to be
6 funded from Mepco, LLC money.

7 Or about August 19, 2010, and in furtherance of his
8 scheme and plan, the defendant caused Committee A to file a
9 quarterly report with the FEC falsely stating that the
10 conduits had made the March 2010 contributions, when in
11 truth and in fact, and as the defendant well knew, the
12 defendant had caused each contribution to be funded from
13 Mepco, LLC.

14 In or about September 2010, the defendant directly and
15 indirectly solicited employees of Mepco, LLC to make
16 contributions to Committee C1, in amounts specified by the
17 defendant and using the funds of Mepco, LLC, which the
18 defendant had caused to be advanced to the employee.

19 On or about September 9, 2010, the defendant caused a
20 Mepco, LLC employee to make a contribution to Committee C1
21 in the amount of approximately five hundred dollars, which
22 the defendant had caused to be funded from Mepco, LLC money.

23 On or about October 15, 2010, and in furtherance of his
24 scheme and plan the defendant caused Committee B to file a
25 quarterly report with the FEC falsely stating that the

1 conduits had made the August 2010 contributions, when in
2 truth and in fact, and as the defendant well knew, the
3 defendant had caused each contribution to be funded from
4 Mepco, LLC.

5 Or about October 15, 2010, and in furtherance of his
6 scheme and plan, the defendant caused Committee C1 to file a
7 quarterly report with the FEC falsely stating that the
8 conduits had made the September 2010 contributions, when in
9 truth and in fact, and as the defendant well knew, the
10 defendant had caused each contribution to be funded from
11 Mepco, LLC.

12 On or about November 8, 2010, and in furtherance of his
13 scheme and plan, the defendant caused Committee A to file a
14 quarterly report with the FEC falsely stating that the
15 conduits had made the June 2010 contributions, when in truth
16 and in fact, and as the defendant well knew, the defendant
17 had caused each contribution to be funded from Mepco, LLC.

18 In or about March 11--I'm sorry, March 2011, the
19 defendant directly and indirectly solicited employees of
20 Mepco, LLC, and their spouses, to make contributions to
21 Committee A, in amounts specified by the defendant and using
22 the funds of Mepco, LLC, which the defendant had caused to
23 be advanced to the employees.

24 On or about March 1, 2011, the defendant caused Mepco,
25 LLC to advance funds to the conduit employees of Mepco, LLC

1 via direct deposit wire transfers from the bank account of
2 Mepco, LLC.

3 On or about March 17, 2011, the defendant caused a
4 Mepco, LLC employee and his spouse to each make a
5 contribution to Committee A in the maximum allowable amount
6 of approximately two thousand five hundred dollars, which
7 the defendant had caused to be funded from Mepco, LLC money.

8 On or about April 15, 2011, and in furtherance of his
9 scheme and plan, the defendant caused Committee A to file a
10 quarterly report with the FEC falsely stating that the
11 conduits had made the March 2011 contributions, when in
12 truth and in fact, and as the defendant well knew, the
13 defendant had caused each contribution to be funded from
14 Mepco, LLC.

15 On or about August 12, 2011, the defendant caused Mepco,
16 LLC to advance funds to the account--or to the conduit
17 employees of Mepco, LLC via direct deposit wire transfers
18 from the bank account of Mepco, LLC.

19 In or about April 12--or April 2012, excuse me, the
20 defendant directly and indirectly solicited employees of
21 Mepco, LLC to make contributions to Committee B, in amounts
22 specified by the defendant and using the funds of Mepco,
23 LLC, which the defendant had caused to be advanced to the
24 employees.

25 On or about April 5, 2012, the defendant caused a Mepco,

1 LLC employee to make a contribution to Committee B in the
2 maximum allowable amount for the primary and general
3 elections of approximately five thousand dollars, which the
4 defendant had caused to be funded from Mepco, LLC money.

5 On or about April 23, 2012, and in furtherance of his
6 scheme and plan, the defendant caused Committee B to file a
7 quarterly report with the FEC falsely stating that the
8 conduits had made the April 2012 contributions, when in
9 truth and in fact, and that the defendant well knew, the
10 defendant had caused each contribution to be funded from
11 Mepco, LLC.

12 In or about September 2012, the defendant directly and
13 indirectly solicited employees of Mepco, LLC to make
14 contributions to Committee D, in amounts specified by the
15 defendant and using the funds of Mepco, LLC, which the
16 defendant had caused to be advertised--or to be advanced to
17 the employees.

18 On or about September 21st, 2012, the defendant caused a
19 Mepco, LLC employee to make a contribution to Committee D in
20 the amount of approximately one thousand dollars, which the
21 defendant had caused to be funded from Mepco, LLC money.

22 On or about October 15, 2012, and in furtherance of his
23 scheme and plan, the defendant caused Committee D to file a
24 quarterly report with the FEC falsely stating that the
25 conduits had made the September 2012 contributions, when in

1 truth and in fact, and as the defendant well knew, the
2 defendant had caused each contribution to be funded from
3 Mepco, LLC.

4 In or about March 2013, the defendant directly and
5 indirectly solicited employees of Mepco, LLC and their
6 spouses to make contributions to Committee A in amounts
7 specified by the defendant and using the funds of Mepco,
8 LLC, which the defendant had caused to be advanced to the
9 employees.

10 In or about March 2013, the defendant directly and
11 indirectly solicited employees of Mepco, LLC and their
12 spouses, to make contributions to Committee C2, in amounts
13 specified by the defendant and using the funds of Mepco,
14 LLC, which the defendant had caused to be advanced to the
15 employees.

16 On or about March 14, 2013, the defendant caused Mepco,
17 LLC to advance funds to the conduit employees of Mepco, LLC
18 via direct deposit wire transfers from the bank account of
19 Mepco, LLC.

20 On or about March 23rd of 2013, the defendant caused a
21 Mepco, LLC employee and his spouse to each make a
22 contribution to Committee C2 in the maximum allowable amount
23 of approximately two thousand six hundred dollars, which the
24 defendant had caused to be funded from Mepco, LLC money.

25 On or about April 1, 2013, the defendant caused a Mepco,

1 LLC employee and his spouse to each make a contribution to
2 Committee A in the maximum allowable amount of approximately
3 two thousand six hundred dollars, which the defendant had
4 caused to be funded from Mepco, LLC money.

5 On or about April 15, 2013, and in furtherance of his
6 scheme and plan, the defendant caused Committee A to file a
7 quarterly report with the FEC falsely stating that the
8 conduits had made the March 2013 contributions, when in
9 truth and in fact, and as the defendant well knew, the
10 defendant had caused each contribution to be funded by--from
11 Mepco, LLC.

12 On or about July 15, 2013, and in furtherance of his
13 scheme and plan, the defendant caused Committee C2 to file a
14 quarterly report with the FEC falsely stating that the
15 conduits had made the March and April 2013 contributions,
16 when in truth and in fact, and as the defendant well knew,
17 the defendant had caused each contribution to be funded from
18 Mepco, LLC.

19 The defendant has pled not guilty to this Count.

20 The statutes defining the offense charged in Count One.

21 Section 1001(a)(1) Title 18 of the United States Code
22 provides, in part, that:

23 Whoever, in any matter within the jurisdiction of the
24 executive, legislative, or judicial branch of the Government
25 of the United States knowingly and willfully falsifies,

1 conceals or covers up by any trick, scheme, or device a
2 material fact shall be guilty of an offense against United
3 States.

4 Section 2(b) of Title 18 o the United States Code
5 provides in whole, that:

6 Whoever willfully causes an act to be done which if
7 directly performed by him or another would be an offense
8 against the United States, is punishable as a principal.

9 Now the scheme to cause false statements to Federal
10 Election Commission in Count One, the elements of the
11 offense.

12 For you to find the defendant guilty of Count One of the
13 indictment, you must find that the Government has proven,
14 beyond a reasonable doubt, that:

15 First: The defendant falsified, concealed, or covered
16 up a fact by trick, scheme, or device, or caused another
17 person to do so, in a matter within the jurisdiction of the
18 Federal Election Commission;

19 Second: The fact was material to the activities or
20 decisions of the Federal Election Commission; and

21 Third: The defendant acted knowingly and willfully.

22 To establish the first element, the Government must
23 prove beyond a reasonable doubt that a fact was falsified,
24 concealed, or covered up by trick, scheme, or device, in a
25 matter within the jurisdiction of the Federal Election

1 Commission.

2 To establish the second element, the Government must
3 prove beyond a reasonable doubt that the fact falsified,
4 concealed, or covered up was material to the Federal
5 Election Commission -- in other words that the fact had a
6 natural tendency to influence, or was capable of
7 influencing, the agency's decisions or activities. The fact
8 falsified, concealed, or covered up need not have actually
9 influenced the agency, and the agency need not rely on the
10 information in fact for it to be material.

11 To establish the third element, the Government must
12 prove beyond a reasonable doubt that the defendant acted
13 knowingly and willfully. An act is done knowingly if the
14 defendant is aware of the act and does not act through
15 ignorance, mistake, or accident. You may consider evidence
16 of the defendant's words, acts, or omissions, along with all
17 the other evidence, in deciding whether the defendant acted
18 knowingly.

19 An act is done willfully if the defendant acted with
20 knowledge that some part of his course of conduct was
21 unlawful and with the intent to do something the law
22 forbids, and again not by mistake or accident. To establish
23 that the defendant acted willfully, the Government does not
24 have to prove that he was aware of the specific provision of
25 the law that he is charged with violating. In other words,

1 a person acts willfully when he acts knowing that his
2 conduct is unlawful or with a bad purpose to disobey or
3 disregard the law, regardless of whether he precisely knows
4 which law or regulations make his conduct unlawful.

5 Count Two charges that during the calendar year 2012, in
6 the Northern District of West Virginia and elsewhere, the
7 defendant James L. Laurita, Jr. did knowingly and willfully
8 make, and cause to be made, contributions of money,
9 aggravating twenty-five thousand dollars and more during the
10 2012 calendar year, in the names of others, to a candidate
11 seeking nomination for election to federal office.

12 Count three charges that: During the calendar year
13 2013, in the Northern District of West Virginia and
14 elsewhere, the defendant, James L. Laurita, Jr. did
15 knowingly and willfully make, and cause to be made,
16 contributions of money, aggregating twenty-five thousand
17 dollars and more during the 2013 calendar year in the names
18 of others to a candidate seeking nomination for election to
19 federal office.

20 The defendant has pled not guilty to these counts.

21 The statutes defining the offense charged in Counts Two
22 and Three.

23 Section 30122 of Title 52 of the United States Code
24 provides, in part, that:

25 No person shall make a contribution in the name of

1 another person or knowingly permit his name to be used to
2 effect such a contribution.

3 Section 30109(d)(1)(A) of Title 52 of the United States
4 Code provides, in part, that:

5 Any person who knowingly and willfully commits a
6 violation of Section 30116 of Title 52 of the United States
7 Code, which involves the making, receiving, or reporting of
8 any contribution, donation, or expenditure aggregating two
9 thousand dollars or more during a calendar year shall be
10 guilty of an offense against the United States.

11 Section 2(b) of Title 18 of the United States Code
12 provides in whole, that:

13 Whoever willfully causes an act to be done which if
14 directly performed by him or another would be an offense
15 against the United States, is punishable as a principal.

16 Making contributions in the name of another. Count Two
17 and Count Three: Elements of the offense.

18 To find the defendant guilty of Count Two and Count
19 Three, the Government must prove each of the following
20 elements beyond a reasonable doubt:

21 The defendant made or caused to be made contributions of
22 at least two thousand dollars during the calendar year 2012,
23 for Count Two, and at least two thousand dollars during
24 calendar year 2013, for Count Three;

25 Second: The person named as the contributor was not the

1 true source of the money used for the contribution, and the
2 defendant was aware of this;

3 Third: The contributions were made to a candidate for
4 federal office, through the candidate's designated campaign
5 committee; and

6 Four or Fourth: The defendant acted knowingly and
7 willfully.

8 As to the first element of Count Two and Count Three,
9 the Government must prove beyond a reasonable doubt that the
10 defendant made or caused to be made contributions that
11 totaled two thousand dollars or more during the calendar
12 year 2012, for Count Two, and during the calendar year 2013,
13 for Count Three. The government need not prove that the
14 defendant made or caused to be made contributions that
15 totaled twenty-five thousand dollars or more, but only that
16 it was two thousand dollars or more. If you find the
17 defendant guilty because the Government has proved this and
18 all the other elements beyond a reasonable doubt, then you
19 must make a further finding as to the first element.

20 Specifically, you must find whether the total contributions
21 made or caused to be made by the defendant fell within three
22 monetary ranges that I will provide to you on a special
23 verdict form, namely (a) two thousand to ten thousand
24 dollars, (b) ten thousand one dollar to twenty-four thousand
25 nine hundred ninety-nine dollars, or (c) twenty-five

1 thousand dollars or more. Please--or do not concern
2 yourselves with the reason for specifying this range.

3 A contribution is any gift, subscription, loan, advance,
4 or deposit of money or anything of value made by any person
5 for the purpose of influencing any election for federal
6 office.

7 As to the second element of both Count Two and Count
8 Three, the Government must prove beyond a reasonable doubt
9 that the individual identified as the contributor was not,
10 in fact, the true source of the money used for the
11 contribution, and that the defendant knew the person
12 contributor--the named contributor was not the true source.
13 Specifically, the law prohibits conduit contributions, which
14 occur when a person provides anything of value, including a
15 gift, subscription, loan, advance, deposit of money, or
16 promise of reimbursement, to another person for the purpose
17 of causing that other person to make a contribution in that
18 other person's name.

19 As to the third element of both Count Two and Count
20 Three, the Government must prove beyond a reasonable doubt
21 that the recipient of the contributions was a candidate for
22 federal office, and that the contributions were made to the
23 candidate through the candidates designated committees.

24 Fourth, and finally, for both Count Two and Count Three,
25 the Government must prove beyond a reasonable doubt that the

1 defendant acted knowingly and willfully.

2 An act is done knowingly if the defendant is aware of
3 the act and does not act through ignorance, mistake, or
4 accident. You may consider the evidence of the defendant's
5 words, acts or omissions, along with all the other evidence,
6 in deciding whether the defendant acted knowingly.

7 An act is done willfully if the defendant acted with
8 knowledge that some part of his course of conduct was
9 unlawful and with the intent to do something the law
10 forbids, and again not by mistake or accident. To establish
11 that the defendant acted willfully, the Government does not
12 have to prove that he was aware of the specific provision of
13 the law that he is charged with violating. In other words,
14 a person acts willfully when he acts knowing that his
15 conduct is unlawful or with a bad purpose to disobey or
16 disregard the law, regardless of whether he precisely knows
17 which law or regulation makes his conduct unlawful.

18 Count Four charges that: In or about March 2013, in the
19 Northern District of West Virginia and elsewhere, the
20 defendant, James L. Laurita, Jr. did knowingly and willfully
21 make, and cause to be made, contributions to Committee A,
22 the official federal campaign committee of Federal Candidate
23 I, which contributions exceeded the limitation contained in
24 the Election Act, and which violation aggregated twenty-five
25 thousand dollars and more during the 2013 calendar year.

1 Defendant has pled not guilty to this charge--or to this
2 count.

3 The statutes defining the offense charged in Count Four.
4 Section 30116 of Title 52 of the United States Code
5 provides, in part, that:

6 No person shall make contributions to any candidate and
7 his authorized political committees with respect to any
8 election for federal office which, in the aggregate, exceed
9 the applicable limit.

10 Section 30109(d)(1)(A) of Title 52 of the United States
11 Code provides in part, that:

12 Any person who knowingly and willfully commits a
13 violation of Section 30116 of Title 52 of the United States
14 Code, which involves the making, receiving, or reporting of
15 any contribution, donation, expenditure aggregating two
16 thousand dollars or more during a calendar year shall be
17 guilty of an offense against the United States.

18 Section 2(b) of Title 18 of the United States Code
19 provides in whole, that:

20 Whoever willfully causes an act to be done which if
21 directly performed by him or another would be an offense
22 against the United States, is punishable as a principal.

23 making excessive campaign contributions, Count Four, the
24 elements of the offense.

25 To find the defendant guilty of Count Four, the

1 Government must prove the following elements beyond a
2 reasonable doubt:

3 First: The defendant made or caused to be made
4 individual campaign contributions in excess of the limit
5 imposed on such contribution;

6 Second: The excess contributions totaled two thousand
7 dollars or more during the calendar year 2013;

8 Third: The excess contributions were made to
9 Congressman David McKinley, a candidate for federal office,
10 through his designated campaign committee, McKinley for
11 Congress; and

12 Four: The defendant acted knowingly and willfully.

13 As to the first element, I instruct you that, in 2013,
14 the limit on individual contributions to candidates for
15 federal elected office and their designated committees was
16 two thousand six hundred dollars for the primary election
17 and two thousand six hundred dollars for the general
18 election, for a total of five thousand two hundred dollars.

19 To establish the first and second elements, the
20 Government must prove beyond a reasonable doubt that the
21 defendant made or willfully caused another to make
22 contributions on his behalf that totaled two thousand
23 dollars or more in excess of the five thousand two hundred
24 dollar limit during the calendar year 2013. The Government
25 need not prove that the amount in excess of the limit was

1 twenty-five thousand dollars or more, but only that it was
2 two thousand dollars or more. If you find the defendant
3 guilty because the Government has proved this and all the
4 other elements beyond a reasonable doubt, then you must make
5 a further finding as to the first element. Specifically,
6 you must then find how much the contribution amount exceeded
7 the limit within two--within two monetary ranges that I will
8 provide to you on a special verdict form, namely, either (a)
9 two thousand dollars to twenty-four thousand nine hundred
10 ninety-nine dollars or (b) twenty-five dollars or more. Do
11 not concern yourself with the reason for specifying this
12 range.

13 A contribution is any gift, subscription, loan, advance,
14 or deposit of money or anything of value made by any person
15 for the purposes of influencing any election--or any
16 election for federal office.

17 In addition, the law requires any contributions made by
18 the defendant, either directly or indirectly, on behalf of a
19 particular candidate, including contributions which are in
20 any way earmarked for or--or otherwise directed through an
21 intermediary or conduit to such candidate, as contributions
22 from the defendant to such candidate.

23 As to the third element of Count Four, the Government
24 must prove beyond a reasonable doubt that Congressman David
25 McKinley was a candidate for federal office, specifically

1 the United States House of Representatives, and that the
2 excess contributions were made to him through his designated
3 candidate committee, McKinley for Congress.

4 Fourth and finally, the Government must prove beyond a
5 reasonable doubt that the defendant acted knowingly and
6 willfully.

7 Any act is done knowingly if the defendant is aware of
8 the act and does not act through ignorance, mistake, or
9 accident. You may consider evidence of the defendant's
10 words, acts, or omissions, along with all the other
11 evidence, in deciding whether the defendant acted knowingly.

12 An act is done willfully if the defendant acted with
13 knowledge that some part of his course of conduct was
14 unlawful and with the intent to do something the law
15 forbids, and again not by mistake or accident. To establish
16 that the defendant acted willfully, the Government does not
17 have to prove that he was aware of the specific provision of
18 the law that he is charged with violating. In other words,
19 a person acts willfully when he acts knowing that his
20 conduct is unlawful or with a bad purpose to disobey or
21 disregard the law, regardless of whether he precisely knows
22 which law or regulation makes his conduct unlawful.

23 Count Five. There is no Count Five for you to consider.
24 You need not concern yourselves with the reason that there
25 is no Count Five.

1 Turning next to Counts Six, Seven and Eight.

2 Count Six charges that: On or about October 15, 2012,
3 in the Northern District of West Virginia and elsewhere, in
4 a matter within the jurisdiction of the Federal Election
5 Commission, a department or agency of the United States
6 Government, the defendant, James L. Laurita, Jr. did
7 knowingly and willfully cause to be made a materially false,
8 fictitious, and fraudulent statement and representation, to
9 wit: An October 2012 quarterly report filed with the FEC,
10 which falsely, fictitiously, and fraudulently stated that
11 contributions to Committee D came from the funds of
12 individual employees of Mepco, LLC and certain of their
13 spouses, when, in truth and in fact, as the defendant well
14 knew, the contributions came from himself through the funds
15 of Mepco, LLC.

16 Count Seven charges that on or about April 15, 2013, in
17 the Northern District of West Virginia and elsewhere, in a
18 matter within the jurisdiction of the Federal Election
19 Commission, a department or agency of the United States
20 Government, the defendant, James L. Laurita, Jr. did
21 knowingly and willfully cause to be made a materially false,
22 fictitious, and fraudulent statement or representation, to
23 wit: An April 2013 quarterly report filed with the FEC,
24 which falsely, fictitiously, and fraudulently stated that
25 contributions to Committee A came from the funds of

1 individual employees of Mepco, LLC, and certain of their
2 spouses, when, in truth and in fact, as the defendant well
3 knew, the contributions came from himself through the funds
4 of Mepco, LLC.

5 Count Eight charges that on or about July 15, 2013, in
6 the Northern District of West Virginia and elsewhere, in a
7 matter within the jurisdiction of the Federal Election
8 Commission, a department or agency of the United States
9 Government, the defendant, James L. Laurita, Jr. did
10 knowingly and willfully cause to made a materially false,
11 fictitious, and fraudulent statement or representation, to
12 wit: A July 2013 quarterly report filed with the FEC, which
13 falsely, fictitiously, and fraudulently stated that
14 contributions to Committee C2 came from the funds of
15 individual employees of Mepco, LLC, and certain of their
16 spouses, when in truth and in fact, as the defendant well
17 knew, the contributions came from himself through the funds
18 of Mepco, LLC.

19 Defendant has pled not guilty to these three counts.

20 The statutes defining the offense charged in Counts Six,
21 Seven and Eight.

22 Section 1001(a)(2) of Title 18 of the United States Code
23 provides, in part, that:

24 Whoever, in any matter within the jurisdiction of the
25 executive, legislative, or judicial branch of the Government

1 of the United States knowingly and willfully makes any
2 false, fictitious, or fraudulent statement or
3 representation, shall be guilty of an offense against the
4 United States.

5 Section 2(d) of Title 18 of the United States Code
6 provides in pertinent--in whole, that:

7 Whoever willfully causes an act to be done which if
8 directly performed by him or another would be an offense
9 against the United States, is punishable as a principal.

10 Causing false statement to Federal Election Commission,
11 Count Six, Count Seven, and Count Eight, elements of the
12 offense.

13 For you to find the defendant guilty of any or all of
14 Counts Six, Seven, and Eight of the indictment, the
15 Government must prove the following elements beyond a
16 reasonable doubt:

17 First: The defendant made or caused another person to
18 make a false statement in a matter within the jurisdiction
19 of the Federal Election Commission;

20 Second: The statement was material to the activities or
21 decisions of the Federal Election Commission; and

22 Third: The defendant acted knowingly and willfully.

23 To establish the first element, the Government must
24 prove beyond a reasonable doubt that a false statement was
25 made in a matter within the jurisdiction of the Federal

1 Election Commission.

2 To establish the second element, the Government must
3 prove beyond a reasonable doubt that the false statement was
4 material to the Federal Election Commission - in other
5 words, that the statement had a natural tendency to
6 influence, or was capable of influencing, the agency's
7 decision--decisions or activities. The false statement need
8 not have actually influenced the agency, and the agency need
9 not rely on the information in fact for it to be material.

10 To establish the third element, the Government must
11 prove beyond a reasonable doubt that the defendant acted
12 knowingly and willfully. An act is done knowingly if the
13 defendant is aware of the act and does not act through
14 ignorance, mistake, or accident. You may consider the
15 evidence of the defendant's words, acts or omissions, along
16 with all the other evidence, in deciding whether the
17 defendant acted knowingly.

18 An act is done willfully if the defendant acted with
19 knowledge that some part of his course of conduct was
20 unlawful and with the intent to do something the law
21 forbids, and again, not by mistake or accident. To
22 establish that the defendant acted willfully, the Government
23 does not have to prove that he was aware of the specific
24 provision of the law that he is charged with violating. In
25 other words, a person acts willfully when he acts knowing

1 that his conduct is unlawful or with a bad purpose to
2 disobey or disregard the law, regardless of whether he
3 precisely knows which law or regulation makes his conduct
4 unlawful.

5 Ladies and Gentlemen, that concludes my instructions for
6 you on the law. The verdict as to the defendant must
7 represent the considered judgment of each juror. In order
8 to return a verdict, it is necessary that each juror agree
9 to it. Your verdict as to the defendant must be unanimous.

10 It is your duty, as jurors, to consult with one another,
11 and to deliberate with a view to reaching an agreement if
12 you can do so without sacrifice of conscientious conviction.
13 Each of you must decide the case for himself or herself, but
14 do so only after an impartial consideration of the evidence
15 in the case with your fellow jurors. In the course of your
16 deliberations, do not hesitate to re-examine your own views,
17 and to change your opinion if you become convinced that it
18 is erroneous. But do not surrender your honest conviction
19 as to the weight or effect of the evidence solely because of
20 the opinion of your fellow jurors, or for the mere purpose
21 of returning a verdict.

22 Some of you have taken notes during the course of this
23 trial. Notes are only an aid to memory and should not be
24 given precedence over your independent recollection of the
25 facts. A juror who did not take notes should rely on his or

1 her independent recollection of the proceedings and should
2 not be influenced by the notes of other jurors.

3 Remember at all times, you are not partisans. You are
4 judges -- judges of the facts. Your sole interest is to
5 seek the truth from the evidence in the case.

6 If it becomes necessary during your deliberations to
7 communicate with me, you may send a note through the Court
8 Security Officer, signed by either your foreperson or one or
9 more members of the jury. No member of the jury should
10 attempt to communicate with the Court by any means other
11 than a signed writing, and the Court will not communicate
12 with any member of the jury on any subject touching the
13 merits of the case other than in writing, or orally here in
14 open Court. Also, I will not give you transcripts of the
15 evidence or testimony adduced at trial. You must make your
16 findings from the evidence as you remember it and let me
17 just move off the page for a moment, Ladies and Gentlemen,
18 we have no transcripts. It's not that I would deprive you
19 of them if they were available, but we don't have any.

20 Bear in mind also that you are never to reveal to any
21 person -- not even to the Court -- how the jury stands,
22 numerically or otherwise, on the question of the guilt of
23 the defendant, until after you have reached a unanimous
24 verdict.

25 In addition, the local rules of this Court provide that

1 after the conclusion of a trial, no party, his agent or his
2 attorney shall communicate or attempt to communicate
3 concerning the jury's deliberations or verdict with any
4 member of the jury before which the case was tried, without
5 first obtaining an order of the Court granting permission to
6 do so. This rule does not prevent you, the jury, from
7 communicating with anyone concerning your deliberations or
8 verdict, but merely governs the contact of you by other
9 persons involved in the trial.

10 Now, Ladies and Gentlemen, we'll stop there. We're
11 going to take a fifteen minute recess to allow you to
12 regroup and to come back in and to hear the closing
13 arguments of the parties. Upon the completion of those
14 closing arguments I will finish this last page of
15 instructions which tells you basically how to go about your
16 deliberations in the jury room.

17 Please understand that until you receive the case at
18 the conclusion of my final instructions after the closing
19 arguments, you cannot discuss the case among yourselves and
20 you cannot deliberate to a verdict. This interval right
21 here is to allow you to have a rest and to be able to use
22 the facilities and to allow the parties to set up for the
23 closing argument. All right.

24 So, again, do not discuss the case among yourselves and
25 please leave your charge and your notebooks face down on

1 your chairs. When you come back we'll hear the closing
2 arguments and the next time you leave, you'll take the
3 charge and your notebooks with you.

4 Thank you for your attention and patience.

5 (Jury out 10:18 a.m.)

6 THE COURT: Is there any objection to the charge as
7 I've communicated it to the jury to this point?

8 MR. DOUGLAS: No, Your Honor.

9 MR. CARR: No, Your Honor.

10 THE COURT: All right. Thank you. The Court
11 stands in recess until twenty-five till eleven.

12 Oh, by the way, the jurors will be ordering menus to
13 have lunch delivered and we will be receiving their choices
14 from them, Debbie will. That's the only communication with
15 the jury. Thank you.

16 (Recess from 10:20 a.m., until 10:35 a.m.)

17 THE COURT: Thank you. Please be seated. Are
18 there any matters to come before the Court?

19 MR. DOUGLAS: No, Your Honor.

20 MR. CARR: No, Your Honor.

21 THE COURT: Thank you. We can bring the jury in.

22 (Jury in 10:36 a.m.)

23 THE COURT: Welcome back, Ladies and Gentlemen of
24 the Jury. We'll now begin the closing arguments and as you
25 may recall from my preliminary instructions, because the

1 Government bears the burden in the case it has the right to
2 open and close the argument. Mr. Douglas.

3 MR. DOUGLAS: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 GOVERNMENT CLOSING ARGUMENT

6 MR. DOUGLAS: The Court has instructed you that it
7 is your sole interest to seek the truth of the evidence.
8 The truth of the evidence is that the defendant abused his
9 trust, the trust of his employees and the authority that he
10 had over them.

11 The Government has to prove beyond a reasonable doubt
12 every element of every offense in the indictment. We're
13 going to take a look at those offenses.

14 The heart of the indictment is the charges of causes
15 contributions in the name of another, conduit contributions,
16 you've heard them called.

17 Count Two is for twelve--2012. Count Three for 2013 and
18 then there's excessive contributions and the false reporting
19 charges.

20 We're going to start with the conduit contributions. As
21 you've heard, there are four requirements of proof. The
22 burden is on the Government. The first is the defendant
23 caused contributions of at least two thousand dollars. Well
24 we know in this case we're talking about hundreds of
25 thousands of dollars in contributions.

1 Second is that the person named as the contributor was
2 not the true source of the money. We've heard what the
3 true source of the money was. We've heard it from all eight
4 of the executives. It was from Mepco and we know the
5 defendant is aware of this because he was causing the money
6 to be advanced to them or reimbursed to them.

7 We heard from the case agent on number three that the
8 contributions were made to a candidate for federal office
9 through a designated campaign committee.

10 And finally must prove certain states of mind.
11 Knowingly and willfully these actions were committed.

12 Now as you can see already here on the bottom what's not
13 required? Evidence of coercion. Evidence of
14 involuntariness is not required. So when you're shown an
15 e-mail that says--from Karen Hughes, if you would like to
16 contribute, it does not relate to the law.

17 But I also want you to think about it in this way as
18 well. Put yourself in the shoes of Rick Usery. He was the
19 one who missed that initial meeting. He was on vacation.
20 He's coming back from vacation, getting back to work, finds
21 out we're going to have to start making campaign
22 contributions. He didn't feel comfortable, he told you. He
23 does not feel comfortable so he shared his reservations with
24 the defendant and the defendant told him, well that's just
25 the way it works. We need access to politicians for our

1 company. So imagine Rick Usery receiving an e-mail saying
2 if you would like to contribute. Do you think he thought,
3 did the boss change his mind already? Did the boss change
4 his mind? Now I don't have to make these contributions.

5 And then you've heard this one for one accounting that
6 we have to take out a cup of coffee at McDonald's. We know
7 the money was put there for this purpose. We don't have to
8 try to follow every dollar in through the bank account.
9 There's no requirement of that.

10 Let's get into what the evidence did reveal. First of
11 all, what was common completely through all eight of
12 executives. They testified that they made the contributions
13 with Mepco money through advancements and reimbursements.
14 They testified that they would not have even made the
15 contributions if not for the funding from the company and
16 you heard them reject, all of them, the suggestion that the
17 second bonus was additional compensation. They testified
18 they never used the second bonus to pay personal expenses.

19 Now let's talk about the specific perspectives of each
20 of the executives and what they testified. Karen Hughes,
21 the first witness, the secretary and treasurer. Known the
22 defendant for forty years, said there was a direct
23 correlation between the second bonus and the contributions.
24 She was the one keeping the spreadsheets. Now do you think
25 that Karen Hughes, who's known the defendant for forty

1 years, is going to go rogue and start keeping spreadsheets
2 if she's not doing what her boss is asking her to do? Do
3 you think Karen Hughes, who's known the defendant for forty
4 years, would misunderstand what the defendant was asking her
5 to do? She told us she received all of her instructions
6 from him. She's the one that would go to him to ask what
7 the amount was. She would receive those instructions.
8 You even saw her understanding from again communications
9 with the defendant when she wrote an e-mail to Kevin O'Dell
10 telling him that the money is not yours. It's not yours.
11 Save for future contributions and on two occasions she asked
12 him to delete e-mails. Again is this Karen Hughes just
13 going rogue on her own, acting on her own accord?

14 And then you'll see an e-mail where the same person,
15 Rick Usery, is asking her about a fundraiser. Is this one
16 of those we're expected to attend and with a check? She
17 said she's relatively certain about the check but she'll
18 find out about the attendance and she told us she was
19 relatively certain about the check because of communications
20 with the defendant and that she would find out about the
21 attendance through the defendant.

22 Kevin O'Dell, he told us the defendant called a meeting
23 and told the executives that they would be receiving a bonus
24 that they would then use to make the contributions. He told
25 us the defendant did not tell him that the bonus was meant

1 to bring his pay up to speed. You did hear that claim that
2 this bonus program was just to bring their pay up to speed.
3 This bonus program was about raising their earnings. We saw
4 in the e-mail of 1-62 that he received a push from the
5 defendant. He also told us the defendant asked, I did what
6 he said

7 Osborn. Again, someone else, not my money. The context
8 of that was he was asked, what did you think when the second
9 bonus stopped? Did you complain? He said no, it's not my
10 money and he told us what was his money, the salary
11 payments. He also told us he made the contributions because
12 he was not concerned about losing the money. That's because
13 they all knew that they wouldn't be out money. They all
14 knew they would be made whole. He also told us he never
15 decided which candidate. He was always told.

16 Rick Usery told us what I've already discussed with you
17 and what's interesting there is the defendant testified that
18 no one told him they did not want to participate. Isn't
19 that what Rick Usery testified that he was doing?

20 And then we have next, Kent Lindsay and Eric Grimm.
21 Kent Lindsay told the--said the defendant told the
22 executives that they would contribute and be reimbursed and
23 again which candidate and Mepco would pay for it.

24 You got to ask yourselves in this case, we've got all
25 eight executives testifying. What motive did they have to

1 tell you a mistruth? What motive does the defendant have?

2 Eric Grimm, when asked why he forwarded one of these
3 fundraising invitations on to the defendant said because it
4 was up to the defendant to decide whether to contribute. He
5 also told us he would not have contributed to Critz without
6 running it by the defendant and then lastly on that Critz
7 donation, the defendant himself in this e-mail says that
8 Hughes would adjust Eric Grimm's account, adjust the
9 account. If this was for compensation why are we talking
10 about adjusting the account? We're adjusting it based on
11 the donations. The account, the second bonus was for the
12 donations.

13 Polce, the last executive to testify, told us the
14 program was the defendant's program. He said he went with
15 what the defendant or what he, the defendant, wanted him to
16 do and remember it was Polce who did not even want to
17 support Senator Manchin and when it was asked, well why did
18 you? He said I did what the man, meaning the defendant,
19 asked him to do.

20 Let's talk about the other evidence. This Court told
21 you you can consider circumstantial evidence. Circumstances
22 are important. At the start of this program Mepco had taken
23 out a loan for over one hundred million dollars for a two
24 billion project. The project was behind. You heard from
25 the defendant, if Longview didn't run, Mepco wouldn't run,

1 and that that would be the end of Mepco.

2 You heard that the defendant started Mepco with his
3 siblings. They sold out their interests leaving him as the
4 only Laurita involved. You heard that he was the president,
5 CEO, part owner.

6 Then you heard from his testimony that GenPower, the
7 company above him, suggested that he become more politically
8 involved so if you look here you have financial stress,
9 family stress, responsibility and stress from above your
10 head. That is what was happening at the start of this
11 program.

12 Then you have to look at the group he approached with
13 this idea. He had hired them. He had promoted them, only
14 one of them had ever given campaign contributions. None of
15 them were familiar with the laws and they all trusted him.

16 You heard that he didn't inform GenPower, that was his
17 parent company, First Reserve which had given him the
18 hundred million dollars or the auditor that was conducting
19 annual audits and with regard to GenPower and First Reserve

20 You heard Karen Hughes talk about these weekly
21 statements. They didn't indicate that the bonus was for
22 campaign donations and you heard the defendant say they have
23 a sixty million dollar annual budget. How is anyone
24 providing oversight over finances going to find five hundred
25 thousand dollars of campaign contributions in a sixty

1 million dollar budget?

2 Now we get to the knowledge that the defendant had about
3 campaign laws. First we'll start with what he told us. He
4 told us that he knew about the individual limitation, an
5 individual can only contribute so much. He told us that he
6 knew that Mepco could not contribute and he also told us
7 that he knew about the conduit contribution prohibition.
8 The way he described it was he knew you couldn't just give
9 someone let's say a hundred dollars and say go give that to
10 Senator Manchin's campaign. He said he knew that was
11 unlawful but that causing a bonus to be deposited into
12 someone's account and having them go give it to Senator
13 Manchin's campaign, he didn't know that was unlawful. This
14 is not credible.

15 You didn't leave your common sense outside the courtroom
16 and you're actually instructed to use common sense. The
17 Court instructed you that the evidence should be considered
18 and viewed by you in the light of your own observations and
19 experience in the ordinary affairs of life.

20 That he, a college educated professional, successful
21 businessman, running businesses, really thought well as long
22 as I don't just hand somebody a hundred dollars that should
23 be okay but you have to consider other discrepancies as the
24 Court instructed you, discrepancies in testimony.

25 You recall that from the beginning of the defendant's

1 testimony to the end things changed. First he said he
2 started the program so that he could the executives more
3 money. By the end he said he started the program because
4 GenPower asked him to be more political.

5 At the beginning he said I'm just trying to pay them
6 more money. That was the purpose. At the end he said well
7 the bonus was connected to the contributions.

8 So how can you believe the defendant if even in the
9 midst of an hour he changes on these two things. They're
10 kind of important.

11 Let's also look at the mechanics of this briefly. The
12 first bonus payment March 9, 2010. What led up to it?
13 March 5, 2010 is when the meeting happened. March 6, 2010
14 defendant himself is sending out an e-mail already talking
15 about suggested campaign donations. March 9, 2010, the same
16 day as the deposit, Polce, his wife is writing the check
17 suggested to be written. March 10th, more checks. March
18 11, another check.

19 There's a direct correlation between receiving the money
20 and the checks immediately going out and if this was
21 compensation it seems quite coincidental that the very day
22 he wants to pay them more money is the very day they started
23 making campaign contributions, especially when you heard
24 that other than one of them none of them had ever made a
25 campaign contribution.

1 2011. Bonus payment, March 17. You see first Polce
2 jumped the gun there one day ahead of the bonus. Does that
3 mean that the bonus didn't fund the March 16th check because
4 it came in the day after? His five figure, meaning ten
5 thousand dollars or more, bonus payment didn't fund these
6 two twenty-five hundred dollar checks? They were advanced.
7 They were reimbursed. They all said the money came from
8 Mepco.

9 We jump to 2013 because in 2011 the advancement was so
10 large that it lasted through 2011 and 2012. You can see
11 that in Karen Hughes' spreadsheet which is Exhibit 52.

12 The last bonus in the program March 14, 2013, you also
13 start to see here the correlation between the contributions
14 and the fundraisers hosted by the defendant. Again one of
15 the executives made the checks out the day before. That
16 does not mean that they weren't funded by the bonus payment.

17 Regarding those special interrogatories, special
18 questions regarding the amounts, in regard to Count Two
19 which is for 2012, there's more than twenty-five thousand
20 dollars in conduit contributions. Manchin alone was forty
21 thousand dollars in April. Snuffer eight thousand in
22 September and you can look for yourself in the exhibits and
23 see the campaigns reporting of what they received from the
24 executives and again you've heard from the executives that
25 all of the contributions they made were part of the program.

1 Count three, also more than twenty-five thousand
2 dollars. Again just one candidate was more than twenty-five
3 thousand dollars, let alone when you add them together.

4 Count Four is also mentioned here because it is charged
5 that the McKinley contributions were excessive. That means
6 once you determine that these were conduit contributions,
7 they were his contributions so they are attributable to him
8 and his individual limitation and you have to determine the
9 excess. The reason why it is twenty-six thousand dollars,
10 and this will be the only math that you will have to do, is
11 that he did make a twenty-six hundred dollar contribution
12 himself to the McKinley campaign and he could have made an
13 additional twenty-six hundred dollars so you must subtract
14 that off and that is what the excess is because twenty-six
15 hundred dollars was the individual limitation for the
16 primary election in May here.

17 Let's talk about those FEC reports. Here three
18 requirements of proof. The defendant caused another person
19 to make a false statement in a matter within the
20 jurisdiction of the FEC. The defendant is the originator
21 and the controller of the program and he is causing them to
22 make contributions. You heard that he knew that the FEC
23 was--or that the campaigns were receiving the information
24 from the candidates and from the contributors and it
25 included the name and the amount. You heard from the agent,

1 Special Agent Lafferty, about the FEC and what they're meant
2 to do, which is to try to bring transparency to the election
3 process, specifically the money that is influencing the
4 election process.

5 Number two: The statement was material to the
6 activities or decisions of the FEC. Also based on the
7 testimony of the agent, and this has been proven and we will
8 get again to the state of mind. He again has to act
9 knowingly and willfully, which we have proved and we'll talk
10 about that.

11 We'll start with the defendant's own testimony. He
12 testified that he knew that it was unlawful for someone to
13 cause another person to make a false state to the
14 Government. He knew the committees or the candidates filed
15 reports with the Government. He knew that the campaign
16 committees were reporting the names of the executives and
17 spouses. In fact there's evidence that he provided names
18 directly to some of the campaigns and he of course knew that
19 Mepco was paying the executives the second bonus so that
20 they could afford, as he put it, to donate.

21 And let's just take a look here at some examples from
22 Exhibit 38 which was Capito for West Virginia FEC report.
23 If you look at the top right you see Eric Grimm and its
24 mentioned his employer is Dana Mining. If you are not
25 intimately aware of the organizational structure of Mepco

1 you have no idea that Eric Grimm is even connected to Mepco,
2 let alone that Mepco was funding this contribution.

3 And it's even more stark when you look at these spouses
4 that were involved. When you look at Lory Osborn and you
5 see WVU. Oh, that's just another WVU employee making a
6 contribution. There is no indication whatsoever to the
7 committees, to the candidates, to the Government and to the
8 public who is trying to influence the candidate through this
9 contribution.

10 Now you heard and you will see in the instructions the
11 indictment mentions Federal Candidate I, Committee A and so
12 forth. The evidence has shown that this is what correlates
13 to those references. The reason why it was referenced in
14 that way is because you've heard no evidence that the
15 candidates or the committees knew that Mepco was funding all
16 these contributions, knew the defendant was causing Mepco to
17 fund all these contributions.

18 You heard that the defendant did not tell them. You saw
19 how much he communicated with them. You how some of them
20 believed that he was raising the money, sending him
21 spreadsheets saying here is who you raised from in the past.
22 That's not true. He was not raising the money. That's if
23 you ask somebody make a contribution and they make it with
24 their own money, not when you're giving them a pool of money
25 and asking them to donate, especially your subordinates.

1 Also in Count One you'll see that it's just generically
2 mentioned when it was read to you. Mepco employee, spouse
3 of Mepco employee. That was done in that matter because of
4 the privacy of those individuals and of course as rightfully
5 so, they came in and testified. These are those individuals
6 referenced and you can find it in their bank records and in
7 the FEC reports.

8 This case really comes down--it's been narrowed. It's
9 been narrowed. It's very simple issues. We make it sound
10 very confusing, but it's really very simple. You have eight
11 people saying the thing happened this way. I understood it
12 this way from a meeting with the defendant. I've known the
13 defendant for forty years. That's how it happened. This
14 was the purpose of the program. This is how it was funded
15 and this is what we were supposed to do. It was not
16 compensation and then on the other end you have the
17 defendant telling a completely different and opposite story.
18 This was compensation. We bring in these one for one dollar
19 accounting. You don't have to go back there, okay, and put
20 on your accounting hat and start looking at the bank
21 statements and crossing out Lowe's, McDonald's. They told
22 you that they made contributions with Mepco money and they
23 would not have done it without the Mepco money. That is
24 what a conduit contribution is and you cannot believe his
25 literal interpretation that as long as I am not giving

1 someone a hundred dollar bill and saying go give this to
2 Senator Manchin, it's okay. So it was okay that I gave
3 hundreds of thousands of dollars to my employees and told
4 them to give it to Senator Manchin and other candidates.
5 That's just not appropriate.

6 Because you have to ask yourself, what motive do these
7 executives have coming in and telling you something that's
8 not true? None. None. You saw how uncomfortable they
9 actually were, didn't you? Karen Hughes, she's knowing him
10 for forty years. They actually were talking about how they
11 had trusted him, how he had never steered them wrong.

12 He had never been in that situation before, a hundred
13 million dollars, two billion dollars. Think of those
14 circumstances. Pressure makes people do things they
15 wouldn't normally do. He never steered me wrong before. He
16 had never been in this situation before.

17 And then you have to compare that to the motive that the
18 defendant has to tell you something that's not true. He's
19 the one sitting at the defense table. He's the one charged
20 with crimes. But, again, don't leave your common sense to
21 the side. You have to look at the evidence through your
22 experience.

23 He got what he wanted too, didn't he? He got the
24 access. Oh, Congress McKinley said something about climate
25 change. I better give him a call. Oh, I'll put out a press

1 release. Well he'd given him eighty-eight thousand dollars
2 in three years. You can check the FEC reports.

3 At the end of the day the Longview Power Plant did not
4 fail because of the war on coal, but because of construction
5 defect. You heard Charlie Huguenard tell us that.

6 You heard--you were instructed by the Court that you
7 were the judges of the facts and that it is your duty to
8 apply the facts and the law. You would not be keeping that
9 duty if you said, well he was just trying to fight the war
10 on coal so we'll just go ahead and let him off. That is not
11 your duty. That would be against your duty and your oath.
12 It doesn't matter why he did it. What matters is what he
13 caused his subordinates to do. What matters is he knew that
14 it was wrong. What matters is he did it anyway.

15 We're asking you to consider the evidence, consider it
16 through your experience and common sense, weighing the
17 credibility of the witnesses. We ask you to find him guilty
18 as charged.

19 END OF GOVERNMENT'S CLOSING ARGUMENT

20 THE COURT: Mr. Carr.

21 MR. CARR: Thank you, Your Honor. May I approach?

22 THE COURT: You may.

23 DEFENDANT'S CLOSING ARGUMENT

24 MR. CARR: Ladies and Gentlemen of the Jury, as I
25 did start off in opening statement, the first thing I want

1 to do is thank each one of you for being here this week.
2 The case came in a little bit quicker than we expected,
3 certainly shortened the scheduled that we expected and the
4 parties apologize for the release yesterday after you having
5 traveled all this way.

6 But again, you all being here this week is just critical
7 to the foundation of our justice system in America and the
8 defendant's right to a jury of citizens like you to
9 determine whether these very serious allegations brought by
10 the Government have actually been proven beyond a reasonable
11 doubt and as the Court instructed you, the indictment and
12 these allegations are merely allegations. They have to be
13 proven.

14 The case obviously has involved campaign finance law.
15 We said it from the beginning and it's probably obvious from
16 the discussion, we do not--these are things--individual
17 campaign maximums, general and primary elections, PACs,
18 whether corporations can give whether that's LLC or a
19 corporation, it's not something that's easy. It's not
20 something that is intuitive and I suggest to you that the
21 simplistic view that the Government has put before you as a
22 theory is not reasonable and it's not accurate given the
23 facts of this case.

24 I want to say one other thing too just to start out
25 before we get into the facts of the case. It seems that

1 throughout this trial our elected officials have been
2 referred to as quote "politicians", trying to get access,
3 money being funneled to them. There is nothing seedy with
4 giving campaign contributions within the law to individuals
5 who are running for elected office. Within the law it is
6 actually a right guaranteed in the Bill of Rights to the
7 Constitution of the United States. The individuals that
8 we're referring to as quote "politicians" are two sitting US
9 Senators from this State and Congressman. There is nothing
10 seedy with giving them donations, or for that matter,
11 wanting to be able to get access to explain to them things
12 that are important to you, your family, the industry, and to
13 your company. There is nothing wrong with that. People may
14 disagree with how the American political system is but that
15 is how it is.

16 A few instructions that I would like to just briefly
17 reference. The first one is on page ten, other acts of the
18 defendant. I would suggest to you that this has been
19 included solely because of contributions to state
20 candidates. It's not that it's some other alleged crime
21 that someone has committed but the state candidates are not
22 in the indictment.

23 Another instruction is from the Court, opening
24 statements and closing arguments by counsel are not
25 evidence. I ask each one of you to rely upon your memory

1 and your notes as to what the witnesses on the witness stand
2 actually said. There are no transcripts. Counsel don't
3 have transcripts. I would suggest to you that some of the
4 statements that have been made summarizing what witnesses
5 have said are not accurate.

6 Mr. Usery, he said that he did not feel comfortable
7 giving to politicians period. He didn't like it but that
8 the quote "program" was explained to him and he agreed
9 because he thought it was necessary and the right thing to
10 do.

11 Mr. O'Dell, there was a quote on that screen, quote
12 "pushed" to try to get that donation in, a push. He didn't
13 use that word. Counsel asked him a leading question, so
14 this was a push and he said yes. He didn't use the word
15 push. We'll look at that e-mail here in a second.

16 I can never pronounce his name right, Polce, P-o-l-c-e.
17 He said he didn't generally like to give to campaigns, but
18 again he agreed to make a donation because he felt it was
19 necessary.

20 There also--there wasn't a number of a sixty million
21 dollar budget for Mepco. Jim testified, it's a sixty
22 million dollar payroll. The budget's a lot more than that.

23 And Jim Laurita from four years ago until the time he
24 walked off that witness stand has never changed his
25 testimony about anything. He said the program from the

1 beginning was to increase political donations, political
2 presence but to do so he was going to increase compensation
3 for his executives. There was nothing that changed from the
4 beginning of his testimony to the end.

5 Another thing I just want to briefly call your attention
6 to is the definition of reasonable doubt and again most
7 people know this. The defense has no burden whatsoever,
8 none. We don't have to present any evidence, no testimony,
9 nothing. The burden is on the Government beyond a
10 reasonable doubt. It's the highest burden known to the
11 justice system, to our legal system and it's that high for a
12 reason because the evidence needed to convict someone of a
13 crime, and it has been determined over time, is to be that
14 high. A doubt based upon reason and common sense and if
15 they have not eliminated all doubt based upon reason and
16 common sense then you must return a verdict of not guilty.
17 As the instruction states, there can be no other attempt by
18 the Court to define that term.

19 This is page twenty-eight of the instructions. I
20 believe that the definition of willful is word for word the
21 same throughout the indictment--or excuse me, throughout the
22 jury instructions. I just used page twenty-eight because we
23 all need to look at one page. Every one of these offenses
24 has to be done willfully. There's a whole lot of other
25 elements. They are also very important but for the moment I

1 want to focus on willfully. When you go back for
2 consideration you have to, in order to find Mr. Laurita,
3 Jim, guilty beyond a reasonable doubt as to each element.
4 An act is done willfully if the defendant acted with
5 knowledge that some part of his course of conduct was
6 unlawful and with the intent to do something the law
7 forbids, and again not by mistake or accident.

8 Jim Laurita had to know that what he was doing was
9 unlawful. That's a very clear distinction. That does not
10 read or should have that something was unlawful. He has to
11 know it was unlawful. There is no direct evidence of that
12 whatsoever. I suggest to you that what the Government has
13 tried to do is to expand, stretch a number of topics well
14 beyond any reasonable doubt to support a conclusion that Jim
15 thought he was doing anything unlawful.

16 Oh, but there's an attempt to hide this program. There
17 was an attempt to hide it, the Government says. What do
18 they point to? Two e-mails from Karen Hughes in which he
19 says, please delete. Of the thousands of pages of e-mails,
20 there's two of them in which Karen Hughes says delete? And
21 what did she testify? Jim didn't tell me to do that. I did
22 that. I don't know why I did it specifically as to those
23 e-mails and they weren't deleted. We saw them.

24 This program was openly discussed among the executive
25 team. Openly. There were discussions about it nearly every

1 week.

2 No documents in Mepco, they say, indicated that that
3 bonus was for fundraising. Government Exhibit 1-66,
4 fundraising compensation. 2011 fundraising compensation
5 through August 31st. It wasn't being hid.

6 This quote "second bonus" was in the payroll system, was
7 in the computer system just like all other compensation.
8 Oh, but it was called bonus. It was labeled bonus, the
9 Government says. Tried to hide it. That's not what Karen
10 Hughes told you. It was put in, keyed as a bonus because
11 that was the only way to put it in the computer system. It
12 wasn't an effort to hide it. That money was put in. Taxes
13 were taken out, Social Security, contributions to 401(k)
14 program, just like all other compensation that was paid to
15 the executives.

16 You know what there isn't in this case? Cash envelopes.
17 Here guys. Here's forty thousand dollars we're going to use
18 this year for political donations. Everybody meet in the
19 parking lot after work. We're going to talk about this.

20 You might have thought when you first heard that we were
21 dealing with campaign contribution violations there must
22 have been a whistle blower. Somebody must have called law
23 enforcement, the FBI and said, listen, I know this is going
24 on in this company. I told them you can't do this. They
25 won't listen to me. Maybe one of the execs told Jim, hey,

1 me and my wife, we have some concerns about this. We think
2 maybe this isn't legal. Nothing of the sort. For three
3 years this went on. The execs all said the same thing. We
4 had no idea that there could be any accusation that any of
5 this was unlawful. Jim told you the exact same thing. No
6 idea.

7 The program ended, as we're calling it, completely
8 voluntarily. It appeared the company was going into
9 bankruptcy and it stopped. Nobody discovered it and called
10 the police. That isn't what happened.

11 Oh, but this was not discussed. We didn't want this
12 discussed outside the executive group. The program was only
13 to be discussed with the executive team. You heard from
14 Karen Hughes and others, all executive compensation was held
15 confidential. All of it. The second bonus wasn't treated
16 any differently.

17 Even Suzanne Crane, Jim's Executive Assistant, access to
18 his e-mails, a lot of personal information, had no idea how
19 much the executives were being paid; had no idea how much
20 Jim was being paid. Not uncommon. Not uncommon in
21 companies across this entire country. Executive
22 compensation is not discussed. Right, wrong or indifferent,
23 also certainly around hourly workers, to include miners.

24 Oh, the Government said, these contributions were being
25 bundled. They're all being put in an envelope. Someone

1 from the campaign is either coming to get them or they're
2 being taken to the fundraisers. They are not being left
3 out--outside near the trash bin for somebody to come pick
4 up. You heard Bill Raney say that's how the campaigns want
5 them. They want you to hand them an envelope with the
6 checks in it. They don't want to have to go around
7 convincing people. Same thing Consol and Alpha were doing.
8 Consol did fundraisers. Same thing that happened across the
9 country, nearly every fundraiser. Jim Laurita thought he
10 was doing merely the exact same thing.

11 Again, all eight execs said exactly the same thing. We
12 had no idea that there could be anything wrong with this.
13 Nothing. Jim Laurita also had no idea there could be
14 anything with it.

15 They mentioned that people weren't told about it. The
16 board wasn't told about it. Ernst & Young and the other
17 auditors and consultants weren't told about it. It was open
18 in the system. It was in the financial system. Jim told
19 you, he can raise salaries, base salaries and give
20 discretionary bonuses. He doesn't need board approval.
21 There wasn't any effort to hide it from the board. Jim's on
22 the board.

23 Ernst & Young, the auditors, they went through the
24 entire financial system. It's just the case no one said I
25 see that there's a second bonus here, what's it for? Jim

1 told you, I never told anybody. I didn't deny it. If they
2 asked, I would have certainly told them. I didn't think
3 there was anything wrong with it.

4 The execs also, nobody ever told us to deny anything.
5 Nobody told us to delete information, destroy records,
6 nothing.

7 If, when the program ended, and it did involuntarily,
8 the evidence came in the case and Jim thought there was
9 something that could possibly be wrong with it, wouldn't he
10 erase it from the company? No. Nobody thought there was
11 anything wrong with it. Jim had not a single clue that
12 anyone could make an accusation there was anything wrong.

13 It's interesting. The Government's presentation is that
14 the case isn't about voluntary--whether things are
15 involuntary and I would suggest to you they spent a good bit
16 of the first part of their closing argument talking about
17 whether it was voluntary or not. Were these donations
18 mandatory or were they suggestions which the executives
19 could or could not agree to do and I submit to you that just
20 because the execs didn't do something before or after or
21 didn't necessarily look forward to going to fundraisers
22 doesn't mean that it's not voluntarily and I would ask each
23 of you to think of times or things in your personal lives
24 where you did something for a period of time, not before or
25 after, even though you didn't necessarily look forward to

1 it. It doesn't make it involuntarily. Because also
2 important, Jim didn't enjoy giving donations or going to
3 fundraisers either. He preferred to be running a coal
4 company.

5 The Government seems to make--I won't use that word.
6 The Government seems to kind of just assume that it be very
7 dismissive about this question of it being Mepco money. It
8 was a critical part of the indictment that this was Mepco
9 money. I suggest to you that that is not as simple as
10 perhaps the Government has suggested.

11 Almost all of the compensation, all the money, income
12 that the executives got, that were in their bank accounts
13 came from Mepco. Almost all of it. Mepco got its money
14 from Allegheny Power. All of it. At what stage does
15 Allegheny Power's money become Mepco's money and at what
16 point does Mepco's money become O'Dell's money? It's not as
17 clear, again I suggest, as the Government would have you
18 think.

19 Let's take for instance, everything that happened with
20 the donations. Eliminate the second bonus. The second
21 bonus never happened. Jim has a meeting, says, hey, you
22 guys all--you guys think this is the right thing to do? Is
23 this what everybody wants to do? Everybody says yes. Kevin
24 O'Dell says here's a check for fifty dollars to give to Joe
25 Manchin. All his money comes from Mepco. Is that his money

1 he gave or Mepco money, because Mepco gave it to him?

2 If a lawyer has a secretary who he knows wants to go to
3 a private school--put the daughter in a private school and
4 the lawyer says I'm going to give you a bonus. You work
5 very hard. It's important for my office. I'm going to give
6 you a bonus that at least covers the tuition for your
7 daughter's private school. I'm not going to keep track
8 dollar for dollar. You're worth it. Daughter's never been
9 in private school before. Leaves the office next year.
10 Daughter no longer goes to private school. Did the lawyer
11 pay for the school? Is it that clear cut?

12 Kevin O'Dell may have said it best when we brought his
13 credit card statement back up and I pointed out that
14 McDonald's purchase and I said did Mepco buy your
15 McDonald's? You may remember he hesitated and said, I see
16 your point.

17 What's very important in the case is not necessarily
18 what the executives thought as to whose money it was,
19 whether it was their money or Mepco money. No one provided
20 an explanation as to when they thought something was theirs.
21 They just were answering the Government's question, who
22 ultimately paid for that, Mepco. That would be true of
23 everything on the credit card statement. Who paid for that?
24 Mepco did. What's important is Jim thought, considered,
25 firmly believed, honestly believed it was their money. It

1 was their compensation.

2 This is Government Exhibit 18-8. Jim explained to you
3 from the stand--I want to say this right here again. Jim
4 had absolute, constitutional Fifth Amendment right not to
5 take the stand. He did and for the first time he was able
6 to tell people--never been interviewed, never even been
7 requested to be interviewed during this entire
8 investigation, what he did and why he did it and he
9 explained to you. He read that. He read that: That no one
10 has advanced you funds for the purpose of making this
11 contribution and that no one will reimburse you for it and
12 he explained that is not what I thought was happening. That
13 is not what I considered the second bonus to be.

14 We're dealing with a situation that is not as clear cut
15 as many other examples. We're talking about an employer
16 with an executive team where all of the funds come from the
17 company. We are not talking about someone giving to someone
18 walking along the street. Jim never ever talked to the
19 miners about making donations. Hey, guys, come over here
20 tomorrow morning. You need a hundred dollar check to
21 Governor Manchin. I'll have a hundred dollar bill for you.
22 Didn't happen.

23 We're not talking about somebody who brings all the
24 people in the neighborhood together and says, listen,
25 everybody show up tomorrow. Don't worry about it. Bring a

1 thousand dollar check for Senator Capito and I'll have the
2 money for you.

3 We're talking about an employer. He said I didn't
4 consider that's what I was doing at all. I know, if it was,
5 okay everybody, give me your check for McKinley, here's your
6 money, and I won't give it to you until I get the check.
7 That's just simply not what happened. Jim did not think
8 that he was violating anything.

9 Every donation, request for a donation, that came from
10 Jim, Jim of course got his recommendations for the most part
11 from the West Virginia Coal Association. They were
12 suggestions. The number one rule Jim told Karen when this
13 started--the number one rule, this is not to be mandatory.
14 No one is required to do this. I don't want that said.

15 All eight execs said, we were never told it was
16 mandatory. It was requested and there were suggested
17 amounts.

18 Government Exhibit 1-92. The Government referred to it
19 in their closings. Conversation between Eric Grimm and Jim.
20 In essence I was only going to have Betty, his wife and I,
21 and I believe that's you and Cheryl give to Critz the
22 attached. If you agree with that, Karen will take care of
23 adjusting your account. If you think we need a different
24 strategy please advise.

25 If this program was run as the Government has tried to

1 represent to you, that e-mail would say, this is the amount.
2 I would like the check in my office tomorrow and don't
3 forget, Eric, I hired you; I promoted you; I can demote you;
4 and fire you. I hope you brought your checkbook to work.
5 That's not what happened. If you agree, please advise.

6 Government Exhibit 1-62. Who's keeping track of
7 donations to campaigns? The campaigns. This is from the
8 McKinley campaign. Kent Lindsay. Mr. Courtland. Kevin
9 O'Dell. Kevin said the only thing he heard from Jim about
10 this is this e-mail. Kevin, any help moving your donation
11 along would be appreciated. Thanks for your help. Did Jim
12 storm in his office and say what part of this don't you
13 understand? You said you were going to do this. Don't
14 leave work until it's done. Don't forget I hired you. I
15 promoted you. I can demote you and fire you. What part of
16 this don't you understand? No. Hey, any help moving your
17 donation along. Kevin said that's all I heard. This is the
18 example where the Government used the term, oh, so he gave
19 you a push. Kevin said yeah.

20 Defendant's Exhibit A. Karen Hughes to Brian Osborn.
21 The yellow highlights are those donations I have not yet
22 received from you. If you intend to make these
23 donations--those donations, please fill in the amount and
24 return to me. Karen Hughes is supposed to be administering
25 the program, kept a spreadsheet, which by the way, Karen

1 says you doesn't remember ever showing to Jim, Jim didn't
2 know that she was keeping it, but these are the
3 donations--if you intend to make those donations, please
4 fill in the amount and return to me. Does that sound like
5 the program was being run as the Government has represented?

6 Brian, you're supposed to make these donations. I'd
7 like to know why you haven't yet. Jim wants to know why you
8 haven't yet. You should understand what this is, not quite
9 sure what part of the memo you didn't. Don't go to lunch
10 until I have a check on my desk because Jim's leaving for
11 the fundraiser tonight. If you plan on making those
12 donations fill it out and let me know.

13 Defendant Exhibit B. She said the same thing to Kent
14 Lindsay. If you intend on making the donations let me know.

15 You can look at Government Exhibit 52. Some people did
16 give to the candidate that was suggested, recommended. Not
17 surprising, candidates who were suggested are pro coal and
18 in the amount. Some did. If you look at Eric Grimm's
19 mid-year section of his spreadsheet for Oliverio, this whole
20 issue of the e-mails about four checks and a thousand
21 dollars and whether he's giving to Oliverio or McKinley, you
22 all remember that discussion. Those two were running
23 against each other. The Coal Association had endorsed
24 Oliverio. Eric Grimm didn't like Oliverio, didn't think he
25 was going to be strong enough for coal once he got to

1 Congress. Eric Grimm didn't make those donations to
2 Oliverio. A lot of people did.

3 Jim told you he had a meeting with them and Eric Grimm
4 said I don't like Oliverio. Jim said do whatever you think
5 is right. Didn't make the donations.

6 And for some of the execs there's some pretty deep
7 disparity as to who gave to who. But it wasn't mandatory.
8 Jim didn't want it to be mandatory. You make your
9 decision. All agreed that it was the right thing to do and
10 that they would support candidates. Had any one of them
11 said I don't want to do this, it wouldn't happen. Even one.
12 It wouldn't have been the other seven who would continue to
13 do it. It would shut off. It was done as a team.

14 The Government kept saying this hire, promote, demote,
15 fire, asked most of the execs those questions. You know
16 what wasn't asked of the executives, the following question.
17 It wasn't asked. Was that in any way, shape or form a
18 motivation for you to give a donation? Not one exec was
19 asked that question, because it wasn't. He hired you,
20 didn't he? Yes. He promoted you, didn't he? Yes. He
21 could demote you, couldn't he? Yes. And he could fire you?
22 Yes. Okay. He's like every other CEO in the entire
23 country. That's why they're CEOs and president. Not one of
24 them said that was a motivation for why they did it, that
25 there were afraid of retribution from him. They did say Jim

1 thought it was important so they did it. It wasn't some
2 threat about their job.

3 Oh, and, you know, Longview's two billion dollar power
4 plant. There's family stress. I heard nothing in this
5 case, perhaps you haven't either, about any family stress
6 with the family business. The business was sold out of the
7 family a long time ago, but somehow implying that there is
8 just this tremendous amount of stress and so we had to start
9 this program. No one testified about that at all. In fact
10 everyone seems to be in complete agreement that the problem
11 was, is that it was perceived and actually they varied their
12 opinions on that, that there was a war on coal going on and
13 that people needed to voice their concerns to candidates and
14 their elected officials. That's why the program started.
15 And why would the execs not say that was the motivation
16 because they know Jim. They know Jim's character. They
17 worked with him very closely and they did trust him.

18 The Government believes--something about abuse of power
19 and abuse of trust. The Government believes Jim let the
20 execs down. He violated their trust. Jim didn't think that
21 was true at the time and he'll tell you he doesn't think
22 that now, because he didn't believe he was doing anything
23 unlawful and he still doesn't.

24 Oh, but Jim wanted to be a big political big shot, sit
25 at the lead table. That's not what motivated Jim.

1 You get to judge and weigh the credibility, the
2 character of every person who was on that witness stand.
3 You also, in this case, got to do that with Jim Laurita. He
4 took the oath and told you, again for the first time that he
5 was able to, what happened and why.

6 None of the eight execs had any inclination that they
7 there was anything wrong with this, anything unlawful in the
8 definition of every count under willfulness or willfully and
9 neither did Jim or it never would have happened.

10 Maybe Kevin O'Dell, that spoke on that issue best. I
11 know Jim's a good man. I know Jim is an honest man and I
12 trusted him.

13 Ladies and Gentlemen of the Jury, the Government has not
14 and cannot establish the elements of these counts of these
15 crimes beyond a reasonable doubt and that is especially true
16 on the issue of Mepco money and whether this was done
17 willfully. Not a single person doing the existence of this
18 three year quote unquote "program" said anything about it.
19 No one raised a concern to Jim. Jim never had any concerns.
20 It was discovered, the program, well after the fact.

21 Consequently when you return to your deliberation room
22 we're going to ask you, after your careful consideration of
23 the evidence and the testimony, to return a verdict of not
24 guilty beyond a reasonable doubt as to each count. Thank
25 you.

1 END OF DEFENDANT'S CLOSING ARGUMENT

2 THE COURT: Mr. Douglas, you have fifteen minutes.

3 MR. BERNARD: Your Honor, I'll be doing the
4 rebuttal on behalf of the Government. Thank you.

5 THE COURT: Oh, I apologize for that.

6 GOVERNMENT REBUTTAL CLOSING ARGUMENT

7 MR. BERNARD: Members of the Jury, fear not. This
8 is rebuttal argument but I promise you it will be ten to
9 fifteen minutes, if that.

10 I could stand here and go over all the evidence as
11 previously summarized during our closing argument that
12 undercuts basically everything counsel just said but I'm not
13 going to do that as I said. I'm going to hit the highlights
14 of--once again, maybe revisit a few points.

15 But let's--let's be clear. What the defense essentially
16 is, is--I hate to use a cliché, but it's ignore the man
17 behind the curtain or in this case the man behind the money.

18 Every executive that took the stand said they wouldn't
19 have done this but for the fact that Mepco was paying for
20 those contributions, dollar for dollar reimbursement
21 essentially at the end and again, you heard the executives
22 say, yeah, no one ever told me that I had to go to
23 McDonald's that day to spend my money but what did they say
24 with respect to every contribution? With respect to the
25 second bonus, every payment that was made by them from that,

1 they did receive direction and they did receive
2 reimbursement. That's all that needs to be proved. This
3 whole dollar for dollar, check in the bag, that's smoke and
4 mirrors.

5 You know, you've heard the evidence. Your common sense
6 tells you what happened and that's what you can use. You
7 didn't check your common sense at the door when you entered
8 the courtroom.

9 Now I have to address this whole voluntariness. With
10 respect to the elements, if you look at those elements when
11 you consider the conduit contributions, there is no
12 requirement that they be compelled or involuntary. It--the
13 executives could have certainly said, yeah, we'll go along
14 with these conduit contributions. You give us some money.
15 We'll send money to the campaigns. It's still a crime. It
16 doesn't have to be compelled. But, again, consider the
17 relationship when you do. This goes to sort of the
18 willfulness or the defendant's intent, state of mind. Think
19 about the position there and they're being approached by
20 their boss and yes, there is some compulsion there as there
21 is in every relationship. They ultimately went along with
22 it. You heard they didn't like to do it. You know what
23 made them go along with it? Do you remember? It was
24 because it wasn't their money. They weren't going to be out
25 one red cent because the defendant, through Mepco, made

1 these contributions. He paid for them through advancements,
2 reimbursements, every dollar.

3 If you look at willfulness, what it essentially requires
4 is that he knows the conduct that he's engaging in is
5 unlawful with the purpose to disregard the law and then
6 there's more to it but that's essentially what we're talking
7 about with willfulness. Well, the defense said the
8 Government--Government is engaging or wants you to engage in
9 some intuitive argument or discussion or analysis. You
10 don't need intuition. You heard the defendant. He knew
11 what the limits were. He knew there were individual limits
12 and he knew the conduit contributions were prohibited.
13 There is no intuition. He admitted it. He also admitted at
14 the end of his testimony and the last statement he made is
15 that the second bonus was tied to political contributions.

16 Now one thing I do agree with counsel for the defendant
17 is he said there's nothing wrong, absolutely nothing wrong
18 in somebody making political contributions. It's true.
19 Absolutely true. But then you have a qualifier. He said
20 absolutely nothing wrong with it as long as you're within
21 the law. That's the problem. What happened here was not
22 within the law and the defendant knew that.

23 Now I am going to revisit the compensation--this whole
24 compensation argument because it is just so flimsy.
25 Remember the defendant talking about--remember his e-mails

1 between Charlie Huguenard and himself talking about look
2 what we have financially at stake. There's a war on coal.
3 I'm going--I'm going to lead the revolution. That's Exhibit
4 1-8, look at it again. Financially--there is so much
5 financial pressure that he wanted to be politically active
6 because he had never been politically active before. He
7 didn't like it but he ran head first into the political pool
8 in this case and the question is, if it was so bad--if the
9 finances were so bad, why in 2010, when these guys worked
10 for him all these years, why at that time when there was
11 such a financial strain on the company, the industry, would
12 you seek to bring your executives' compensation up to
13 industry standards? Makes no sense. It really doesn't if
14 that was compensation. However, it does make sense that the
15 day after or the day of the first deposit, what happens?
16 Political contributions start flowing from the executives
17 and their spouses. That tells you. The inference, your
18 common sense, your ordinary experience in life tells you
19 what that money was for. It wasn't compensation. It was
20 directly for political contributions by Mepco and the
21 defendant.

22 I think it's important--I believe counsel, during
23 closing argument, mentioned this. I think it's important
24 because it was my witness that I was doing the direct of and
25 remember Mr. Osborn, I asked him, I said, well if this was a

1 bonus, if this was increasing your salary up to industry
2 standards, when this was stopped, fifty thousand dollars a
3 year, whatever it was, a ton of money, when those stopped,
4 did you question? Did you complain? Did you say, hey, I'm
5 just out fifty thousand dollars. No, it wasn't my money.

6 Let's talk about motivation because again I think I
7 mentioned it but every executive said their motivation--they
8 didn't say he forced me but again think about the
9 motivation. Their motivation wasn't money and that they
10 weren't going to be out any money, that everything that they
11 gave to the campaign was going to be paid for by Mepco so,
12 again, keep that in mind.

13 And, again, I don't want to keep on about this
14 voluntariness but I do think it adds a flavor to the state
15 of mind of the defendant and what necessarily was going
16 through the executives' minds when he proposed or suggested
17 these things. Were they really proposals or suggestions?

18 Counsel mentioned--I'm not going to spend a lot of time
19 on this but something about there was no whistle blower.
20 This wasn't a whistle blower case. You know, as you heard
21 the testimony what happened was, yeah, this was hidden and
22 I'll say hidden. Five hundred thousand dollars in a sixty
23 million dollar payroll, if you don't point that out, sure
24 the accountant's going to pay it but it appeared as a
25 payroll payment. It did appear as a bonus. If they don't

1 ask about, well, don't ask, don't tell basically was
2 the--the policy of the defendant and the Mepco employees,
3 especially those that were involved in the audit.

4 But what did happen in this case is when somebody in the
5 bankruptcy started to scratch below the surface, what
6 happened? House of cards fell apart.

7 You know one thing I think is important when you're
8 assessing the credibility, his counsel said you saw the
9 defendant. He said this. He said that. Believe him.
10 Well, you know what, you are the judges in this case of the
11 facts and the credibility. It's an awesome responsibility
12 and when you do that you have to, as the Judge instructed
13 you, consider the witness' motive, their intelligence, their
14 state of mind at the time of the events we're talking about,
15 not when they're sitting on the stand necessarily, but what
16 was going through their mind when the events were happening.
17 Then you have to also consider the extent that their
18 testimony is contradicted or in direct conflict with other
19 witnesses. Eight executives. Yep, this was all reimbursed.
20 Mepco paid for these or I wouldn't have done it. The
21 defendant, it's their money.

22 Again, another thing you have at your power is the power
23 of assessing this evidence for reasonable inferences.
24 Obviously, a lot of times you're not going to have a
25 confession or a map up on the stand. You have to apply your

1 life experiences using reasonable inferences based on the
2 evidence and based upon these factors concerning witness'
3 credibility and you know one of the most important factors
4 that you have to consider is the--what is at stake for the
5 person on the stand? How are they affected by the verdict
6 when assessing their credibility? The executives were on
7 the stand. They testified and again I think some of them
8 maybe not happy, Karen Hughes maybe not happy, but they
9 don't--they swore to tell the truth and that's what's at
10 stake.

11 The defendant on the other hand, what's at stake are the
12 crimes he's been charged with which the evidence establishes
13 he's guilty of. That's what's at stake for him so remember
14 to assess his credibility under that standard.

15 Let's talk about willfulness a little bit because I
16 think it's important that you understand and counsel kind of
17 brushed over this but just remember, at this time back in
18 2010 Mepco had invested one hundred million dollars in
19 establishing and updating the Four West Mine which was going
20 to be providing all the coal for the Longview Power Plant.
21 There was a two point two billion dollar investment in
22 Longview. Longview was a year behind its schedule and that
23 was going to have a substantial impact on the investors'
24 money and the defendant's financial interest as well.
25 There's a war on coal as you heard. Okay. There's a war on

1 coal. All these things. The defendant was pressured by the
2 parent company to get involved in the political process.
3 Recall the e-mails between Charlie Huguenard and the
4 defendant where the defendant said, My God, we have too much
5 at stake here. The--you know, we need--I'm going to lead a
6 revolution. These are all things that you must consider
7 that the defendant at this time, in desperate times,
8 sometimes people make desperate choices and unfortunately
9 sometimes those choices are to break the law.

10 In this case I think the evidence is overwhelming that
11 the defendant did, through Mepco, and cause the employees of
12 Mepco to make the conduit contributions. They were fully
13 reimbursed by Mepco for those and that--plus the reports by
14 the campaigns included those individuals. The defendant
15 knew that that was going to happen. Once that information
16 got put in those FEC reports and they got filed with the
17 appropriate agency, the FEC, they were false statements.
18 The defendant knew that. Hide those false statements. They
19 were material. It doesn't matter if the FEC really knew
20 about them or even acted on them. It's the mere fact of
21 causing those material false statements that establishes the
22 defendant's guilt.

23 You know, passing judgment on another individual is not
24 an easy task. It's not a pleasurable task. It's tough. I
25 understand that. But in this case, passing judgment on the

1 facts, on the elements of the offenses based on the evidence
2 is not difficult. The evidence establishes each and every
3 count, each and every element beyond a reasonable doubt and
4 that is that the defendant is guilty on all counts and I
5 would ask you to return a verdict of guilty on all counts.
6 Thank you.

7 END OF GOVERNMENT'S REBUTTAL ARGUMENT

8 THE COURT: All right. Ladies and Gentlemen, if
9 you'll refer back to the charge. I'm on page forty-four but
10 just for your information I'm also going to be referencing
11 page thirty and page thirty-three--no, sorry, not
12 thirty-three, thirty-four. So it's page thirty and
13 thirty-four as I discuss the verdict form with you.

14 All right. Now on page forty-four. Upon retiring to
15 the jury room you should select--first you should select one
16 of your number to act as a foreperson. That person will
17 preside over your deliberations and will be your
18 spokesperson here in court. Now just so you know, this is
19 not like TV where the foreperson has to get up and read the
20 whole verdict. I do that. The foreperson tells me that the
21 jury has reached a decision, whatever it is, those decisions
22 are unanimous and then you had the verdict form to the Court
23 Security Officer who hands it to me. I just want you to
24 know that.

25 When you go to the jury room to consider the evidence

1 presented to you during the trial of this case, you will be
2 furnished with a jury verdict form which is
3 self-explanatory. Now you don't have a copy of that. There
4 will only be one in the jury room and it will be in the
5 possession of the foreperson. You can only find the
6 defendant either guilty or not guilty as to each of the
7 charges in the indictment if all agree but I want to go over
8 this with you because you heard the phrase, or the term
9 special interrogatories used a couple of times, particularly
10 in the Government's close and I want to explain where they
11 are and how you should look at them.

12 As to Count One, that's the scheme count and you can
13 only find the defendant either guilty beyond a reasonable
14 doubt on not guilty of the charge of scheme to cause false
15 statements to Federal Election Commission as charged in
16 Count One of the indictment. That's a separate count. You
17 must all vote on it separately and you can return a verdict
18 only if your vote is unanimous, all twelve of you agree.
19 The foreperson will date it, and will sign it.

20 Now when you finish with that count, then you would move
21 on two Count Two. That Count Two is the one you will find
22 on page thirty in the charge, which is the charge of making
23 or count of making contributions in the name of another.
24 It's also the same count or same allegation in Count Three
25 but it's for a different year. Okay.

1 So in Count Two it's in 2012. For Count Three it's
2 2013. It is the same elements but you're going to decide
3 each of these counts separately okay. And it tells you,
4 again, as to Count Two guilty beyond a reasonable doubt or
5 not guilty and then the foreperson will date and sign it.

6 Now the next thing that's on that page says Special
7 Interrogatories for Count Two. That means there's more
8 than--interrogatory is a legal term meaning question. Okay.
9 And there's more than one question but there are directions
10 for each of the questions.

11 The first direction is complete 2(a), which is this
12 first question, only if your finding for Count Two is guilty
13 and then there are three questions, 2(a), 2(b) and 2(c). As
14 to 2(a) you have to determine whether you unanimously find
15 that the offense charged more than or equal to twenty-five
16 thousand dollars of total contributions made in the name of
17 another during the calendar year of 2012 to a candidate
18 seeking nomination for election to federal office. Now
19 remember this is a charge of contribution in the name of
20 another so this is looking for an amount.

21 Now if you don't find that the offense involved more
22 than or equal to twenty-five thousand dollars total
23 contributions you would answer no. If you found that it
24 did, then you would answer yes.

25 If you answered no, the instructions say complete 2(b)

1 only if your finding for Count Two is guilty and your
2 finding for 2(a) is no. Okay.

3 So these are options and then 2(b), the amount involved
4 is more than ten thousand dollars of total contributions
5 made in the name of another during the calendar year 2012.
6 This is all still Count Two. Now if you find as to Count
7 Two that the answer to more than ten thousand is no, then
8 you would go to Count Three. Now remember, if you answered
9 yes to Count Two (2a) you don't go to 2(b). If you answer
10 yes to 2(b) you don't go to 2(c). You're only going to fill
11 out one of these three questions. Okay.

12 Count--2(c) the amount is more than or equal to two
13 thousand dollars of total contributions. So while you don't
14 have to do a lot of math, you do have to do some math to
15 find out what you unanimously agree is the amount involved
16 in Count Two if, and only if, you unanimously found the
17 defendant guilty as to that charge. Whatever you find as to
18 the amount in the special interrogatory you must also agree
19 to unanimously.

20 The same instruction as to Count Three. The only thing
21 that's changed there is the year and this is the calendar
22 year 2013. If Mr. Laurita--if you find he is not guilty,
23 you don't answer any of the special interrogatories. If you
24 find that he is guilty beyond a reasonable doubt unanimously
25 then you must answer one of the three interrogatories as to

1 the amount. Okay.

2 Now as to the fourth count that is not one where you
3 have to make a--yes, you do. You have to make--you have to
4 answer a special interrogatory for Count Four. Count Four
5 charges making excessive campaign contributions so this is
6 the final interrogatory. Count Four. Again, if Mr. Laurita
7 is not guilty you don't answer any of the interrogatories.
8 If you found him unanimously--you found him guilty beyond a
9 reasonable doubt, then you must answer one of these three
10 interrogatories and the first, 4(a) again is the more than
11 or equal to twenty-five thousand dollars and the second
12 would be if--if you have to move on is more than two
13 thousand dollars and I apologize. I said there were three
14 interrogatories. As to Count Four there are only two.
15 You'll see it here.

16 There are no interrogatories as to Count Six, Seven and
17 Eight and you'll recall there's no Count Five. Okay.

18 So this is in the hands of the foreperson who will sign
19 again as to each of the counts specifically. There is a
20 signature line and a date for every count. This will be
21 with you in the jury room. All of you will be able to look
22 at it. Although it will be in the possession of the
23 foreperson, certainly he or she may share it with all of
24 you.

25 Now please don't begin your deliberations until the

1 Clerk delivers to your jury room this verdict form and all
2 of the exhibits. They will be in the jury room on the table
3 with you.

4 Now finally, and I must ask those in the front row of
5 the courtroom on the Government's side to leave that bench
6 and move back. Thank you. Observing that all the principal
7 jurors are able-bodied and mentally alert, it's now my duty
8 to ask the alternate jurors to stand aside and take a seat
9 in the courtroom and that would be Alternate Number Two
10 Mr. Dawson, Alternate Number Three Ms. Layman and Alternate
11 Number Four Ms. Thompson. Ms. Layman and Ms. Thompson,
12 you're already there so, Mr. Dawson, if you'll just sit next
13 to them, I'm going to have further instructions for you
14 three after the main jurors leave the courtroom.

15 Ladies and Gentlemen, the case is now ready for your
16 deliberation and the Court Security Office will conduct you
17 to the jury from. On behalf of the parties, counsel, I
18 thank you for your attention, your patience and I believe
19 that you will find your lunch in the jury room; if not, it
20 should be there shortly. Thank you. Take everything with
21 you please.

22 (Jury out 12:08 p.m.)

23 THE COURT: Mr. Dawson, Ms. Layman and Ms.
24 Thompson, the Court Security Officer will escort you to your
25 room across the hall. As you saw this morning, jurors can

1 become ill, something can happen. Don't leave yet, I'm
2 still instructing you, Mr. Dawson. That's okay. It is not
3 ordinary but it is not uncommon that during deliberations a
4 juror may become incapacitated and unable to continue, at
5 which point we would go down numerically, Juror Two, Three,
6 Four to replace the main juror who was unable to continue to
7 serve and you saw what happened this morning with Juror
8 Number Nine so I therefore instruct you that you may not
9 discuss the case among yourselves when you are across the
10 hall. Now please talk about the complete breakdown of West
11 Virginia University's basketball team last night if you'd
12 like to. I'd be happy to talk to you about that after this
13 case was all over but I have--I think we have a couple of
14 magazines. I hate to tell you how old they are and I've
15 looked at the newspaper. I think I can send a newspaper
16 over. I don't think there's anything on this case in our
17 local newspaper. If there is, we'll cut it out. I'm trying
18 to tell you we have some reading material for you but we
19 also have lunch and your lunch, as you ordered it, will be
20 across the hall so would you please now with our thanks and
21 out gratitude for your patience, proceed across the hall
22 with the Court Security Officer. Whenever the jury is
23 brought back in, should that happen, for a question or
24 something, you will be brought in as well. You're jurors.
25 Okay. If you have to replace a juror, we will certainly let

1 you know. When the verdict comes in, you will be brought in
2 here, okay, and then at the conclusion of the case you'll go
3 back to the jury room. If you have personal belongings in
4 the jury room that you would like to have across the hall,
5 Debbie will take care of retrieving those for you so she'll
6 be over there to talk to you about anything that you need.
7 Okay. Thank you. Take those with you. They belong to you.
8 They absolutely belong to you at this point. Thank you.

9 (Alternate Jurors out)

10 THE COURT: Counsel, any objections to place on the
11 record before we recess?

12 MR. DOUGLAS: No, Your Honor.

13 MR. CARR: No, Your Honor, and I'm returning
14 Defendant's A and B to the Courtroom Deputy.

15 THE COURT: All right. Thank you. Now could I ask
16 counsel to please come up and look at those exhibits before
17 Debbie takes them in. I'm not going to leave the Bench
18 until you've assured me that all the exhibits are there and
19 that you're satisfied.

20 (Pause)

21 THE COURT: This is a housekeeping matter so anyone
22 who's in the courtroom and who wishes to go out for lunch or
23 whatever, you're free to leave. This is just something that
24 the lawyers have to go through in order to make sure that
25 the correct exhibits go back to the jury room.

1 (Pause)

2 THE COURT: Counsel, I will leave this courtroom
3 open for you. You have your conference rooms. You can stay
4 in here. You can leave your files in here if you want to.
5 It's up to you but I--actually I need to ask Debbie. Do I
6 have anything today?

7 THE CLERK: No, Your Honor.

8 THE COURT: Okay. So there's no hearing. So
9 you're free to leave anything you want in here, to move in
10 and out of the room. I'll leave it open.

11 MR. DOUGLAS: Thank you.

12 THE COURT: You're welcome.

13 MR. CARR: Your Honor, if I may ask, I know in the
14 Cason case so long as we were within a five to ten minute
15 radius--

16 THE COURT: That's true. Exactly. Yeah.
17 Ritz's is always a good place to get lunch because it's
18 within five minutes if we get--if we get a question and I'm
19 sure you're very hungry so don't feel like you're obligated
20 to just stay here in the courthouse.

21 MR. CARR: Thank you, Your Honor.

22 THE COURT: You're welcome. Is there any objection
23 to the instructions--I mean to the--to the evidence as
24 compiled?

25 MR. DOUGLAS: No, we're still--

1 THE COURT: You're still--oh, okay. I thought you
2 were finished. Thanks.

3 (Pause)

4 THE COURT: Everybody left their cell number with
5 Debbie? And depending on how this goes if you--during the
6 afternoon if you need coffee or anything, you're free to
7 come in Chambers. We have a Keurig.

8 MR. CARR: Thank you, Your Honor.

9 MR. DOUGLAS: Thank you, Your Honor.

10 (Pause)

11 THE COURT: Court stands in recess. Thank you.

12 (Recess from 12:17 p.m., until 3:35 p.m.)

13 THE COURT: Thank you. Please be seated. All
14 right. You have a copy of the question that I have received
15 from the jury. I'm going to suggest to you that perhaps a
16 simple response that says, they're calling step four but I
17 would--what I think we've called the fourth element--well
18 it's--it's willfulness and it applies to each and every
19 count of the indictment, right? Isn't that what we're were
20 really talking about here?

21 MR. DOUGLAS: Yes, Your Honor.

22 THE COURT: I think.

23 MR. DOUGLAS: It appears.

24 MR. CARR: Your Honor, I very active much have to
25 admit that had not occurred to me as to what they were

1 referring to as--

2 THE COURT: Well, it's step four of Counts Two and
3 Three are--

4 MR. CARR: Your Honor, that makes a lot more sense
5 than what I was trying to figure out.

6 THE COURT: Oh, okay.

7 MR. CARR: And what I believed that it meant so--

8 THE COURT: Well you may be thinking of the right
9 thing and I haven't thought of it. I just assumed when I
10 looked at fourth, defendant acted knowingly and willfully.

11 MR. CARR: Your Honor, we immediately thought of
12 the verdict form as you might imagine.

13 THE COURT: The verdict form has three.

14 MR. CARR: Your Honor, it didn't make any sense and
15 so I very much appreciate--we do agree and we also agree
16 that step four applies to each count or the four--

17 THE COURT: Although there aren't four elements to
18 every count so I can take a stab at this, go back and bring
19 it out but I think what I should say to them is, Ladies and
20 Gentlemen of the Jury, if your question is directed to the
21 fourth element of knowingly and willfully and then I could
22 even do an open paren (see page 30 and page 35) as to Counts
23 Two and Three you must determine that element unanimously
24 beyond a reasonable doubt and then for each count, and I
25 think here they mean the entirety of the indictment, step

1 four, as they're calling it is actually in Count One, the
2 third element and in Court Four it's the fourth element and
3 in Counts Six, Seven and Eight it's the third element.

4 It's going to take me a little bit of time to construct
5 this but I think all I'm going to do is point them to the
6 page, tell them it's--the same element of knowingly and
7 willfully applies to each count but under a different number
8 depending on how many elements there are to that count.
9 Does that make sense?

10 MR. DOUGLAS: Yes, Your Honor.

11 MR. CARR: Yes, Your Honor.

12 THE COURT: Okay. I mean if you all want time to
13 talk about it among yourselves I'm happy to--to sit while
14 you think.

15 MR. CARR: No objection, Your Honor.

16 THE COURT: Okay.

17 MR. BERNARD: I guess the first question is if
18 that's what they mean or are you just going to suggest, I
19 think this is what you mean?

20 THE COURT: If you're referring to the fourth
21 element as found on page thirty for Count Three and
22 thirty--what did I say, four for Count Four, the element of
23 willfully and knowingly, you must find that unanimously
24 beyond a reasonable doubt as to each count and then as to
25 your second question for each count, that means every

1 count--each and every count of the indictment. Willfully
2 and knowingly is an element of each count whether numbered
3 three as in Count One, Four, Six, Seven and Eight or four as
4 in Counts Two and Three. Does that work?

5 MR. BERNARD: No objection to that.

6 THE COURT: I wish I had dictated that to somebody.

7 MR. BERNARD: And if that's not their question I
8 guess they'll just return another note and say that's not
9 our question.

10 THE COURT: Right. Who's the person who told me if
11 we made that language uniform we wouldn't get a question?
12 All right. I will be back in just a minute.

13 (Recess from 3:40 p.m., until 4:25 p.m.)

14 THE COURT: Please be seated. I'll give you a
15 minute to look over those proposed answers. They didn't
16 number the notes and I tried to put them in order. I did,
17 rather than four separate answers I did compress or did join
18 the answers to numbers, to notes two and three regarding
19 their deliberations. Wait a minute. Did we forget one?

20 (Pause)

21 THE COURT: The one amount a unanimous verdict
22 didn't come out. I apologize. All right. Are you ready to
23 discuss? What's the Government's position? Let's take
24 the--they're not numbered but the one that discusses the
25 first question in your first note.

1 MR. DOUGLAS: No objection, Your Honor.

2 MR. CARR: No objection, Your Honor.

3 THE COURT: Okay. Now as to the note--the response
4 that says as to each count the Government must prove beyond
5 a reasonable doubt.

6 MR. DOUGLAS: No objection, Your Honor.

7 MR. CARR: No objection, Your Honor.

8 THE COURT: All right. The next note, while we're
9 waiting for the other one. This response is really to the
10 question about the juror contacting her employer and making
11 and it also relates in part to the other note regarding
12 where they stand and while we're waiting for the other note,
13 do you have any objection to this response concerning their
14 right to set their schedule?

15 MR. DOUGLAS: No, Your Honor.

16 MR. CARR: No, Your Honor.

17 THE COURT: Okay. So I will give these three
18 responses to--with the original notes to the Clerk and I
19 didn't number those notes because they didn't so the
20 record's not going to be very good about how they came in
21 but some of them are timed, some of them aren't. I don't
22 know anything we can do except leave it the way they came in
23 to us.

24 MR. DOUGLAS: That's fine, Your Honor.

25 THE COURT: Those are the responses, Debbie. We're

1 waiting on one more.

2 (Pause)

3 MR. DOUGLAS: No objection, Your Honor.

4 MR. CARR: No objection.

5 THE COURT: All right. Then I'll direct the Clerk
6 to take this answer as well. Now there are four, correct,
7 take those to the jury and I'll wait to see what we receive
8 next. The jury is thinking this through, and that was the
9 fourth note. I don't think she had that.

10 So I will--if they don't respond with their schedule by
11 five o'clock I may bring them in to ask.

12 MR. CARR: Your Honor, if I may respectfully ask a
13 question. Do you think it would help the record--I know we
14 referred to the notes and it may be possible from reading
15 the transcript to identify them but for us to at least put
16 the first few words of note one and the response that goes
17 with it, note two and the response that goes with it just so
18 that perhaps the record--

19 THE COURT: Well, I did that with the first one
20 where there was--there were two questions.

21 MR. CARR: I understand, Your Honor.

22 THE COURT: The others seem pretty self-explanatory
23 but--

24 MR. CARR: Your Honor, I apologize. I'm sure the
25 record will be clear.

1 THE COURT: Okay. I want the record to be clear as
2 well and if it's okay with you all what I can do with these
3 notes, just for purposes of an appeal, if there is one,
4 would be to on the court order denominate the notes one
5 through four for purposes of the record.

6 MR. DOUGLAS: No objection, Your Honor.

7 THE COURT: The jury didn't refer to them that way.
8 I won't refer to them that way with the jury but for the
9 record so, Debbie, if you want to hand these to me, just
10 make sure. My recollection is that first note was the one
11 that had two questions in it.

12 MR. DOUGLAS: Yes, Your Honor.

13 THE COURT: All right. So that would be marked as
14 Court--Jury Deliberations Exhibit 1. Is that acceptable?

15 MR. DOUGLAS: Yes, Your Honor.

16 MR. CARR: Yes, Your Honor.

17 THE COURT: Or Jury Deliberations Note One, just
18 with the sticker. Did you docket it as one?

19 (Pause)

20 THE COURT: I know but we need to know what to
21 refer to this as if we get another question so this would
22 be--this one I'm handing to you would be Jury Deliberation
23 Note One.

24 I believe the second one was for knowingly and willfully
25 or was that--no. The second was what happens if?

1 MR. DOUGLAS: It appears that that's correct, Your
2 Honor.

3 THE COURT: All right. That would be denominated
4 Jury Deliberation Note Two.

5 And the third would be Jury needs to contact?

6 MR. DOUGLAS: Yes, Your Honor.

7 MR. CARR: Yes, Your Honor.

8 THE COURT: That would be denominated Jury
9 Deliberation Note Three.

10 And then the final one that begins four, knowingly,
11 would be denominated Jury Deliberation Note Four.

12 MR. DOUGLAS: Yes, Your Honor.

13 MR. CARR: Yes, Your Honor.

14 THE COURT: Okay. Anything else?

15 MR. DOUGLAS: No, Your Honor.

16 MR. CARR: No, Your Honor.

17 THE COURT: And the record will reflect that the
18 Clerk has delivered--Debbie, did the Court Security Officer
19 take them in?

20 THE CLERK: Yes.

21 THE COURT: Okay. So through the Clerk and the
22 Court Security Officer the answers to the notes have been
23 delivered to the jury. Thank you.

24 (Recess from 4:35 p.m., until 5:15 p.m.)

25 THE COURT: Thank you. Please be seated there are

1 a couple of issues. One is one juror needs to contact her
2 employer. I can't let her go down to get her phone so if
3 it's acceptable to all of you I'm planning to send a note
4 asking the jury if they've determined what their schedule
5 for the evening is. If the answer is they're going to
6 continue to deliberate and want us to send in menus for
7 dinner then I would get the number from the juror and call
8 her employer. Any objection to that?

9 MR. DOUGLAS: No, Your Honor.

10 MR. CARR: No, Your Honor.

11 THE COURT: The other issue is we've got three
12 alternates across the hall who are probably beginning to
13 think they've been locked in there for the night. Once I
14 know the answer to the question about the schedule then I'll
15 bring them--if they're going to continue to deliberate, I'll
16 bring those alternates over, explain to them that that's
17 going on and also let them know we're going to get them
18 dinner.

19 MR. DOUGLAS: No objection.

20 MR. CARR: Yes, Your Honor.

21 (Pause)

22 THE COURT: Please be seated. This is not in
23 response to my request for the schedule. This is a
24 simultaneous note. We handed them my note. They handed
25 their note.

1 Juror Number Ten, if you're wondering. I have a
2 suggestion. My suggestion, since you saw my note to them,
3 would be to bring them in, excuse them for the night, see
4 how Juror Number Ten does during the evening and resume
5 their deliberations at nine o'clock tomorrow morning or
6 actually, the weather reports are horrific. Alternate
7 Number Two has a ninety mile one way drive. My suggestion
8 would be perhaps they begin at ten which would give a fair
9 opportunity for the interstates and some of the second roads
10 to be cleared. I know that's a delay and you don't like it.
11 The only other thing is to dismiss her, call in Alternate
12 Number Two but they may choose to leave in an hour anyway.

13 MR. BERNARD: Your Honor, I don't see any choice
14 even if you empanel the alternate, they'd have to--

15 THE COURT: They'd have to begin over again and
16 they probably want to be excused tonight.

17 MR. BERNARD: So we're better off to see if she
18 feels well enough and if not seat the alternate.

19 THE COURT: I think so.

20 MR. CARR: May I have a moment, Your Honor?

21 THE COURT: Yes.

22 (Pause)

23 MR. CARR: Your Honor, respectively, the
24 defendant's position, given that she appears to be quite
25 sick and with the weather approaching, would be to dismiss

1 her and replace her with the alternative--with the
2 alternate.

3 THE COURT: Well, I can do that in the morning too.
4 I mean that's not something that I have to do tonight if
5 perhaps she recovers throughout the night and is able to
6 continue tomorrow morning. Otherwise, if she does not show
7 up tomorrow morning then I would replace the
8 Alternate--replace her with the Alternate and they would
9 begin their deliberations anew.

10 MR. CARR: Yes, Your Honor.

11 THE COURT: So there--I doubt--I candidly doubt
12 it's fair to ask them to begin their deliberations anew
13 tonight but I can--I think it's--excuse me.

14 (Pause)

15 THE COURT: They passed the other note. Okay.
16 Let's--where is it? Court Security has another note.

17 (Pause)

18 THE COURT: Okay. They want to continue tomorrow.
19 So I think that answers the question.

20 MR. CARR: Yes, Your Honor.

21 THE COURT: Okay. I order this--they sent it back
22 on the paper that I sent in and it's three words, continue
23 tomorrow please so I'll order the Clerk to file the note and
24 ask Court Security to please bring the jury in. And we need
25 to bring the alternates in from across the hall please. If

1 I let Juror Number Ten go tonight then I would move Juror
2 Number--Alternate Number Two up tonight but then they would
3 begin tomorrow morning.

4 MR. CARR: I understand, Your Honor.

5 THE COURT: And I would bring them in tomorrow
6 morning to advise them that they have to begin their
7 deliberations anew.

8 MR. CARR: No objection, Your Honor, for the
9 record.

10 THE COURT: Is there any objection to dismissing
11 the old juror tonight since they want to begin tomorrow
12 morning anyway?

13 MR. DOUGLAS: No, Your Honor.

14 THE COURT: Okay. Then she can go home without the
15 anxiety of knowing whether she has to return tomorrow.
16 Notably, the juror who couldn't come this morning because
17 they were ill, and the juror who's become ill were sitting
18 next to each other or close.

19 (Alternate jurors in)

20 THE COURT: Ladies and Gentlemen, we're bringing
21 the jury in to adjourn for the evening.

22 (Jury in 5:27 p.m.)

23 THE COURT: All right. Ladies and Gentlemen, I've
24 received your note and first we all thank you for all the
25 efforts you put into the case today. I have also learned

1 from one of your notes that Juror Number Ten, Ms. Woody, has
2 been ill and trying to work through this all day. Ms.
3 Woody, after consulting with the attorneys, I'll excuse you
4 as a juror. You may leave at this time. All right. Now as
5 you do that, please leave your charge and your notes with
6 Debbie, the Clerk, and do not discuss this case with anyone.
7 All right. Thank you very much. I appreciate so much your
8 effort and I'm so sorry you don't feel well.

9 (Jury Number Ten excused)

10 THE COURT: At this time I order Alternate Number
11 Two, Mr. Dawson, to replace Juror Number Ten. Thank you,
12 Mr. Dawson.

13 Ladies and Gentlemen, with the replacement of Juror
14 Number Ten in the middle of your deliberations that means
15 that tomorrow morning you are to begin your deliberations
16 anew since you have a new juror.

17 You've requested to adjourn for the evening. I'll bring
18 you back in tomorrow morning and more fully explain what
19 your obligations are with the new juror but during this
20 evening's recess please understand that you are not to
21 discuss the case with anyone else and don't call each other
22 on the phone. You can only discuss this case among
23 yourselves when you're all together. All twelve of you have
24 to be present in order to discuss the case.

25 As it stands tonight, the best I know about the weather

1 is it hasn't started, but it will get very cold this evening
2 and some areas may get snow. There's going to be rain so I
3 want to get you out of here as quickly as possible.

4 Don't review any media coverage of this case should
5 there be any, whether in the newspaper, on the radio, or on
6 the television. Don't attempt any independent research
7 regarding the issues that have been raised in the case and
8 please, as I've said, only discuss this case when you're all
9 together in the jury room in your secret deliberations.

10 Leave your notebooks and your charge face down on your
11 chairs. Just so you're assured, we pick them up without
12 looking at anything and store them in the safe. I told you
13 that on day one and nobody reads anything and this is only
14 Debbie who touches them and she will return them to you
15 again face down in your jury chair tomorrow morning. You
16 can't take them home with you is the reason. I told you you
17 could keep them until the case was over but it didn't end
18 today so we have to store them for you.

19 When you return tomorrow morning, we were just talking
20 about this, because we don't know how bad the weather will
21 be and for those of you and where you live, my
22 suggestion--it's the foreperson's decision, my suggestion
23 would be ten o'clock to give the roads a chance to be plowed
24 if there is a need for that, whatever it may be. If you
25 want to eight, that's fine. If you want to come at nine,

1 that's fine. I would ask that you not come any later than
2 ten from wherever you are, but does the foreperson know what
3 the sense of the jury would be on that?

4 (Pause)

5 THE COURT: All right. Let me ask then. I'm just
6 a former school teacher. Raise your hands if you'd like to
7 start at eight a.m?

8 (No Response)

9 THE COURT: Well that's one decision we--what about
10 nine a.m?

11 (No Response)

12 THE COURT: Ten a.m? Okay. All right. I was
13 going to say you have to come back. You have to raise your
14 hand for one of them. Okay. All right. Thank you very
15 much so we'll start at ten a.m. I'm sure we will have some
16 delightful kind of doughnut here for you in the morning to
17 enjoy with your coffee or tea. We thank you very much for
18 your attention, your patience and your diligence in your
19 duties.

20 At this time then with the instructions, finally if any
21 third party attempts to approach you to discuss this case
22 you must tell them no you are not allowed to and report that
23 contact to me through Court Security or Debbie at your
24 earliest opportunity. You're free to go. Thank you. I
25 would request that everyone in the courtroom remain in the

1 courtroom until the jury is escorted out. Because it's
2 after hours they have to go out through the main hallway.

3 (Jury out 5:36 p.m.)

4 THE COURT: Is there any objection to the evening
5 instructions that I've given to the jury?

6 MR. DOUGLAS: No, Your Honor.

7 MR. CARR: No, Your Honor.

8 THE COURT: All right. Thank you. Please, I'll
9 make sure Court Security lets you know and gives you the
10 high sign as soon as you can leave.

11 MR. CARR: Your Honor, if I may inquire and I
12 apologize. I've not been in this--

13 THE COURT: Certainly.

14 MR. CARR: --situation with a jury going into
15 Friday and with a new juror on the panel. Understanding
16 that you have another case that we understood was starting
17 on Monday, if they do not--

18 THE COURT: That case has been--there's been a
19 decision in that case.

20 MR. CARR: Your Honor, if they do not reach a
21 decision then on Monday, just for counsel's planning
22 purpose, would we expect that they would return Monday then?

23 THE COURT: You mean if they don't reach a decision
24 tomorrow?

25 MR. CARR: Yes, Your Honor, that's what I meant to

1 say.

2 THE COURT: I think that's a bridge to be crossed
3 during the day tomorrow. We'll just have to wait and see
4 how--what develops.

5 MR. CARR: Yes, Your Honor.

6 THE COURT: Okay. Thank you. So we'll let you
7 know as soon as you can go out in the hall. I apologize.
8 The courtroom--the courthouse is just too small. There is
9 no separate ingress and egress for the public without
10 running into the jury until they're let out. Thank you.

11 Court stands adjourned until ten o'clock tomorrow
12 morning.

13 (Trial adjourned at 5:40 p.m.)

14 *****

15 **FEBRUARY 2, 2018**

16 P R O C E E D I N G S

17 (02-02-2018, 10:00 o'clock a.m., defendant present)

18 THE COURT: Good morning. It is my intention to
19 bring the jury in to refresh their recollection about their
20 instructions to begin their deliberations anew this morning.
21 Is there any objection?

22 MR. DOUGLAS: No, Your Honor.

23 MR. CARR: No, Your Honor.

24 THE COURT: All right. Thank you. Could we please
25 bring the alternate jurors into the courtroom and bring the

1 jury in. Thank you.

2 (Jury in 10:01 a.m.)

3 THE COURT: Good morning, Ladies and Gentlemen.
4 Thank you for being here this morning. I hope that with the
5 delayed start you were able to make your way without too
6 much challenge on the interstate or the secondary roads.

7 As I advised you last night before we adjourned, you
8 need to begin your deliberations anew this morning because
9 of the replacement of Ms. Woody with Mr. Dawson and as you
10 go back into the jury room, please recall that you are only
11 to deliberate the case when you are in the jury room and if
12 you come back here in the courtroom because of any further
13 questions that need to be addressed in here, we will take
14 them up in here. I will not come back to you in there. Do
15 you all understand that? And to the extent that you
16 deliberate through the day and wish to have lunch brought in
17 again today I'm happy to do that and Debbie can bring in the
18 menus for you so that that can be done on a timely basis.

19 Thank you for your attention and consideration. The
20 case is yours to deliberate and you may return to your jury
21 rooms. Do you have your notebooks and your charge? Thank
22 you. The alternates can return to their chambers. Thank
23 you.

24 (Jury out 10:03 a.m.)

25 THE COURT: Any matters to take up?

1 MR. DOUGLAS: No, Your Honor.

2 MR. CARR: No, Your Honor.

3 THE COURT: Court stands in recess. Thank you.

4 (Recess from 10:05 a.m., until 12:45 p.m.)

5 THE COURT: Thank you. Please be seated. All
6 right. So you've read the note from the jury.

7 MR. DOUGLAS: Yes, Your Honor.

8 MR. CARR: Yes, Your Honor.

9 THE COURT: From the foreperson. You all can
10 remain seated for this. I think we have to discuss how we
11 want to proceed at this point and I have--not because I
12 intend to give one or the other but I have provided you with
13 a couple of examples of the kind of further supplemental
14 charge I could give the jury. However, I would prefer to
15 hear from both sides prior to determining whether it's
16 appropriate, based on time passed since deliberations have
17 been underway and the substance of the juror--the
18 foreperson's note, whether to give the charge or not.

19 So I'll hear from counsel for the Government.

20 MR. CARR: Your Honor, if I may, and I apologize.
21 Obviously we have received the information and I know both
22 sides have tried as diligently as possible in the time that
23 we've allowed. Could we have sixty seconds for counsel to
24 discuss the matter with each other?

25 THE COURT: Sure. Do you want me to leave the

1 Bench and you can go across the hall and I can come back
2 when you're finished?

3 MR. CARR: Your Honor, we certainly aren't trying
4 to inconvenience the Court.

5 THE COURT: Oh, that's no inconvenience.

6 MR. CARR: It's just--

7 THE COURT: The jury is eating lunch as I
8 understand it so I don't think that there's any particularly
9 unusual urgency.

10 MR. CARR: It just occurred to me that it might be
11 productive--

12 THE COURT: All right.

13 MR. CARR: --now that we've read this for counsel
14 to consult.

15 THE COURT: Why don't I leave the Bench, give you
16 all a five minute recess. If you need more you can let me
17 know and if you finish sooner you can tell me.

18 MR. CARR: Thank you, Your Honor.

19 THE COURT: Court stands in recess for five
20 minutes.

21 (Recess)

22 THE COURT: Thank you. Please be seated. Let me
23 advise the jury had not yet received their lunch due to a
24 mix-up at the mag so they've just received it now but I will
25 hear from the parties.

1 MR. DOUGLAS: Your Honor, based on first of all the
2 notes, the specificity of the notes yesterday indicating
3 apparently that they're on the--onto the state of mind
4 elements and have been deliberating on that and then the
5 intensity of this note, we don't think it would be really
6 useful to give a modified Allen Charge at this stage and to
7 graduate it up to a full. It appears that it would be most
8 appropriate to go ahead and go with the full Allen Charge.

9 With regard to it, Your Honor, on page--

10 THE COURT: So you want an Allen Charge?

11 MR. DOUGLAS: Yes, Your Honor.

12 THE COURT: All right.

13 MR. DOUGLAS: May I finish?

14 THE COURT: Yeah. I'm just thinking on that.

15 MR. DOUGLAS: Yes, Your Honor.

16 THE COURT: Go ahead.

17 MR. DOUGLAS: On page four the paragraph that
18 starts with above all--

19 THE COURT: Well before you start picking apart the
20 Allen Charge, what I understand, with respect, what you want
21 is an Allen Charge so let's lay aside the rest of that
22 because I have to decide whether I'm going to give one.

23 MR. DOUGLAS: Yes. Yes, Your Honor.

24 THE COURT: Okay. All right. What's the
25 defendant's position?

1 MR. CARR: I apologize, Your Honor. It's very
2 unnatural to be sitting and addressing a Court. Your Honor,
3 it's the defense's position, given the--the fact that this
4 issue was raised yesterday, we realize that there has been a
5 juror who is--the alternate juror was in place. It does
6 appear they have no more questions. They were instructed
7 very clearly on two related questions yesterday and the--I
8 believe it's been referred to the intensity of this note and
9 what it is that is referenced in the note about some of us,
10 we do not believe that the Allen Charge would be sufficient
11 at this time and would request that the Court declare the
12 jury hung and declare a mistrial.

13 THE COURT: All right. The first question is, is
14 it appropriate to--to give an Allen Charge at this point in
15 the case? And some of the factors that you're aware we need
16 to consider in making this decision, all of us, is how long
17 was the trial? How long has the jury been out and what can
18 we glean from the notes that we've received from the jury?
19 Of course what we're trying to avoid here is if I gave a
20 charge, giving one that had an impermissible coercive effect
21 on jury deliberations and here the trial began on Monday,
22 proceeded on Tuesday and wrapped up early Wednesday morning.
23 So the case, you know, it's basically, generously two and a
24 half days of evidence because most of Monday morning--all of
25 Monday morning was jury selection. The jury began its

1 deliberations shortly after noon yesterday and adjourned
2 approximately five-thirty so we had, I would say
3 approximately five and a half hours of deliberation during
4 which the Court received four or five notes, Debbie?

5 (Pause)

6 THE COURT: Six. Technically six notes. Okay.
7 But five substantive notes and then they've been
8 deliberating with a second alternate who took his seat
9 yesterday evening before we adjourned and who's been with
10 the jury as part of the jury since this morning at ten
11 o'clock and so I've received this note which is
12 unfortunately not dated--not timed and I was in another
13 hearing on the phone but I'm going to say what was it,
14 approximately a quarter till one? Does anybody know what
15 time the jury handed out this note? Twelve-thirty. All
16 right. So twelve-thirty. I think it might have been a
17 little later than that given where I was in that other
18 hearing. Well, okay, anyway, between twelve-thirty and
19 twenty till one and this note I think in very strong terms
20 indicates that the jury is unable to come to an agreement.

21 So it seems to me that the concern for the Court is what
22 is it that I should address to the jurors that is
23 appropriate but not coercive?

24 Now, we've been trying to do some research and we all
25 agree it's--there's a high degree of necessity required to

1 establish a mistrial due to the hopeless deadlock of jury
2 members. That's the Supreme Court in Arizona versus
3 Washington.

4 The record should reflect that the jury is genuinely
5 deadlocked and we've had a reported inability to agree and
6 in determining whether to declare a mistrial because of jury
7 deadlock, a District Court should consider the--the jury's
8 collective opinion that it cannot agree, the length of the
9 trial, the complexity of the issues, the length of time the
10 jury has deliberated, whether the defendant has objected to
11 a mistrial, and the effects of exhaustion or coercion on the
12 jury. Here it's the defendant moving for the mistrial.

13 The most critical factor, according to the majority of
14 courts, is the jury's own statement that it is unable to
15 reach a verdict. Now--but something more is needed. So I'm
16 receiving word from the jury that it can not reach a
17 verdict, as we have here.

18 I have a couple of options. I can, in my discretion,
19 give an Allen Charge or I can question the jury and
20 ultimately I must question the jury to determine
21 independently whether further deliberations might overcome
22 the deadlock.

23 Now, I can bring the jury in and address the foreperson
24 as follows: In your opinion is the jury unable to agree on
25 a verdict as to one or more counts? I can address all the

1 jurors after that. If any of you disagree with the
2 foreperson's answer, please tell me now. If the foreperson
3 has answered yes, the jury is unable to agree, the next
4 question would be is there a reasonable probability that the
5 jury can reach a unanimous verdict if sent back to the jury
6 room for further deliberation and if the response to that is
7 no then I have the discretion to address all the jurors as
8 follows: Without stating where any juror stands do any of
9 you believe that there is a reasonable probability that the
10 jury can reach a unanimous verdict if sent back to the jury
11 room for further deliberation?

12 Now that is something that I'm going to have to do
13 anyway and the question I think is really do I do that now
14 or do I give one or the other of the Allen Charges before
15 you. One, the pure Allen Charge and the other a modified
16 Allen Charge.

17 The Fourth Circuit, this past year--actually a year ago
18 in February, but in an unpublished opinion styled United
19 States versus Maraz Fugon, M-a-r-a-z, F-u-g-o-n, 679 Fed
20 Appendix 270, 2017 found no error when a traditional pure
21 Allen Charge was given but did cite two United States versus
22 Cornell, a Fourth Circuit published opinion 2015, cert
23 denied, saying abuse of discretion is the standard and
24 stating in determining whether an Allen Charge has an
25 impermissible coercive effect on jury deliberations we

1 consider the content of the instruction as well as the
2 context.

3 So let's look at the context first. The jury has been
4 at it for less than ten hours. Why should I give an Allen
5 Charge?

6 MR. DOUGLAS: Your Honor, it would be the position
7 of the Government again that it appears that very quickly it
8 became a particular narrow issue and--regarding the state of
9 mind--

10 THE COURT: There weren't a lot of issues in the
11 case. I mean I think that was pretty obvious from the
12 closing arguments, correct?

13 MR. DOUGLAS: Yes.

14 THE COURT: Yeah. Factually this isn't a case
15 where the jury has hundreds of exhibits and has to go
16 through and make factual decisions about these exhibits.

17 MR. DOUGLAS: Yes, Your Honor, and to the extent
18 that it's been a narrow issue case, they've been
19 deliberating on that issue, apparently from the notes, for
20 longer so I guess what I'm trying to say is it's longer than
21 it appears because they've been focusing on a single issue.

22 THE COURT: I mean totality the jury hasn't been
23 deliberating ten hours. You're saying of that period of
24 time that they have been deliberating, five and a half hours
25 yesterday and approximately two and a half hours today

1 before we heard from them, most of that has been focused on
2 the issues identified yesterday?

3 MR. DOUGLAS: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. DOUGLAS: And that that would support an Allen
6 Charge.

7 THE COURT: Because the totality of the evidence in
8 the case took how many hours to get in?

9 MR. DOUGLAS: Right. The evidence only took, as
10 the Court said, generously two and a half days, really less
11 than that to put on and the closing arguments narrowed it
12 also really to credibility and who--who was to be believed.

13 THE COURT: Uh-huh (yes). All right. Defense?

14 MR. CARR: Your Honor, may I have a moment?

15 THE COURT: Yes.

16 (Pause)

17 MR. CARR: Your Honor, for the reasons previously
18 stated, we would stand by our request for the mistrial,
19 understanding that the Court would still need to question
20 the jurors.

21 THE COURT: All right. My decision is as follows.

22 One: I deny the request for a mistrial at this time.

23 Two: I will instruct the jury with what I think we--we in
24 the legal profession would call a neutral form of the Allen
25 Charge and that is the one page charge--recommended charge

1 that I've given to you rather than the pure Allen Charge of
2 four pages that I've also submitted to you.

3 I think that when--my reasons for this are that in
4 assessing the coerciveness of an Allen Charge a Court
5 should look at the time the jury deliberated after receiving
6 the case and also the nature of the communication expressing
7 that they are unable to reach a verdict so the--and also the
8 fact that yesterday evening when the jury left we had an
9 indication of an issue. A new juror joined. The jury
10 returned this morning and we have now received a note
11 specifically telling us that they are unable to reach a
12 verdict.

13 So the Allen Charge that I deliver to them will be
14 delivered at an interval where they will not have a night to
15 think about it again. They're going to have to go right
16 back in and deliberate and in order--I don't believe that a
17 neutral form of the Allen Charge will have a coercive effect
18 on the jury under those circumstances but I am very
19 concerned that a pure Allen Charge would--could be viewed as
20 impermissibly coercive on--through the retrospectoscope of
21 an appellate review. This jury seems to have its mind made
22 up and I think the neutral Allen Charge simply informs them,
23 as we want to, that--to remind them I should say, of their
24 duty to reach a unanimous decision if it is at all possible
25 and for those reasons I intend to bring the jury in, read

1 the neutral Allen Charge, they will not need a copy of it
2 unless counsel wishes them to have a copy of it but it would
3 be--it would not be my intent to give them a copy of the
4 Allen Charge. I don't think that--to carry back to the jury
5 room with them. I think if they hear it, that's all they
6 need. Does the Government have any objection?

7 MR. DOUGLAS: No, Your Honor, no objection.

8 THE COURT: Does the defendant?

9 MR. CARR: Nothing further, Your Honor.

10 THE COURT: All right. We need to bring the jury
11 in and we need to bring in the alternates from across the
12 hall.

13 (Jury in 1:17 p.m.)

14 THE COURT: Good afternoon, Ladies and Gentlemen.
15 I'm sorry if I've interrupted your lunch. I've received the
16 foreperson's note and you have advised me that you have been
17 unable to agree upon a verdict in this case.

18 After some consideration I have decided to suggest a few
19 thoughts to you.

20 As jurors, you have a duty to discuss the case with one
21 another and to deliberate in an effort to reach the
22 unanimous verdict if each of you can do so without violating
23 your individual judgment and conscience.

24 Each of you must decide the case for yourself but only
25 after you consider the evidence impartially with your fellow

1 jurors.

2 During your deliberations you should not hesitate to
3 re-examine your own views and change your opinion if you
4 become persuaded that it is wrong. However, you should not
5 change an honest belief as to the weight or effect of the
6 evidence solely because of the opinions of your fellow
7 jurors or for the mere purpose of returning a verdict.

8 All of you are equally honest and conscientious jurors
9 who have heard the same evidence.

10 All of you share an equal desire to arrive at a verdict.

11 Each of you should ask yourself whether you should
12 question the correctness of your present position.

13 I remind you that in your deliberations you are to
14 consider the instructions I have given you as a whole. You
15 should not single out any part of any instruction, including
16 this one that I'm in the process of giving you and ignore
17 others. All of the instructions are equally important.

18 I would now ask that you retire to continue your
19 deliberations and thank you for your attention to this
20 additional instruction. Please follow Court Security back
21 to your jury room. Would the alternates please follow the
22 Court Security Office back across the hall. Thank you.

23 (Jury out 1:20 p.m.)

24 THE COURT: All right. I'll let you know if I
25 receive another note from the jury and if the import of that

1 note is as--that the jury's position has not changed I do
2 intend to inquire with the jury along the lines that I
3 outlined. Does the Government have any objection to that
4 intent should it become necessary to do so?

5 MR. DOUGLAS: No, Your Honor.

6 THE COURT: Does the defendant?

7 MR. CARR: No, Your Honor.

8 THE COURT: All right. Thank you. And in
9 connection with doing that what I would likely do at that
10 point is poll the jurors individually when I go to the
11 entire jury if the questions require me to go to the jury.

12 MR. DOUGLAS: No objection.

13 THE COURT: All right.

14 MR. CARR: No objection.

15 THE COURT: Thank you. Court stands in recess.

16 Thank you.

17 (Recess from 1:22 p.m., until 4:30 p.m.)

18 THE COURT: Thank you. Please be seated. The jury
19 has returned a note or has sent a note and I have asked the
20 Clerk to distribute it to you so I think we're in a
21 situation where I need to raise the question of how do the
22 parties wish to proceed? I'll begin with the Government.

23 MR. DOUGLAS: Your Honor, the Government would
24 renew it's motion for a pure Allen Charge for the reasons
25 previously stated and in addition based upon the reference

1 in the new note to some jurors having had changed their
2 views.

3 THE COURT: Uh-huh (yes). What's the defendant's
4 position?

5 MR. CARR: Your Honor, we would renew our motion
6 for the Court to declare the jury hung and also order a
7 mistrial. Counsel also would note that it is possible, if
8 not perhaps probable, that the comment about changing
9 certain views is an indication from the jury that they took
10 the Court's previous instructions seriously but they are
11 hopelessly deadlocked.

12 THE COURT: The Court denies the Government's
13 renewed motion for a pure Allen Charge and finds that it
14 would serve no purpose since the jurors note has
15 demonstrated that they did do exactly what the goal of the
16 Allen Charge, so called Allen Charge, is and that is
17 to--they went back and carefully continued their
18 deliberations and reconsidered their views. To give what
19 the Government calls the pure Allen Charge at this point in
20 my opinion would be purely coercive and the Court will not
21 step into that erroneous ground, therefore declines--and
22 declines to do so.

23 Now pursuant to Rule 26.3, I just want to refresh your
24 recollection that before a Court can order a mistrial, the
25 Court must give each defendant and the Government an

1 opportunity to comment on the propriety of the order, to
2 state whether that party consents or objects and to suggest
3 alternatives.

4 I've rejected the Government's alternative at this point
5 of a "pure" quote unquote Allen Charge and would also advise
6 that I do suggest for your consideration that I bring the
7 jury in and inquire of the foreperson as to whether the jury
8 is hopelessly deadlocked and then poll--if the answer is
9 yes, poll the individual jurors about whether there's
10 reasonable probability that they could reach a unanimous
11 verdict if sent back to the jury room for further
12 deliberation and if the answer to that is no, then I think
13 it's--there's likely no other reasonable alternative to
14 suggest then the declaration of a mistrial. What's the
15 Government's position on that?

16 MR. DOUGLAS: Your Honor, with regard to the
17 polling, the Government has no objection other than to
18 request that the Court inquire as to whether it is on all
19 counts, although it appears it is. If the--

20 THE COURT: Well there--it's--the question would be
21 whether they're unable to agree on a verdict as to one or
22 more counts. I don't think we're supposed to elicit from
23 them, in violation of the rules, any specificity.

24 MR. DOUGLAS: Yes, Your Honor. With regard to the
25 granting of a mistrial, it would be over the objection of

1 the Government.

2 THE COURT: All right. To the extent that the
3 foreperson responds that this is on some counts but not all
4 counts, I will certainly further inquire as to whether there
5 are any counts on which they've reached unanimity but I
6 believe from the current note and the two that preceded it
7 that's highly unlikely. What's the defendant's position?

8 MR. CARR: We do not object to the jury being
9 polled, Your Honor.

10 THE COURT: All right. Then I think at this time
11 it's appropriate to bring in the jury the alternates.

12 (Jury in 4:40 p.m.)

13 THE COURT: Good afternoon, Ladies and Gentlemen of
14 the jury. I have received the foreperson's note indicating
15 that no verdict will be unanimously given. May I inquire of
16 Madam Foreperson, is that as to each and every count of the
17 indictment?

18 FOREPERSON: Yes, Your Honor.

19 THE COURT: All right. Thank you. Now, Madam
20 Foreperson, may I ask if it's your opinion that--whether the
21 jury is unable to agree on a verdict as to any count at all?

22 FOREPERSON: We have not agreed unanimously on any
23 verdict.

24 THE COURT: All right. And it is your opinion that
25 based on where the jury stands that there is no reasonable

1 probability that that will occur?

2 FOREPERSON: No, ma'am, I do not.

3 THE COURT: All right. Thank you. Now I want to
4 address the next question to each of the jurors and just to
5 ask you by your juror number if you--if any of you disagree
6 with the foreperson's answer.

7 Juror Number One, do you disagree with the--with the
8 foreperson's answer?

9 JUROR NUMBER ONE: I do not.

10 THE COURT: All right. Juror Number Two, do you
11 disagree?

12 JUROR NUMBER TWO: I do not.

13 THE COURT: All right. Juror Number Three, do you
14 disagree?

15 JUROR NUMBER THREE: I do not.

16 THE COURT: Juror Number Four, do you disagree?

17 JUROR NUMBER FOUR: I do not.

18 THE COURT: Juror Number Five, do you disagree?

19 JUROR NUMBER FIVE: I do not.

20 THE COURT: Juror Number Six, do you disagree?

21 JUROR NUMBER SIX: I do not.

22 THE COURT: Juror Number Seven?

23 JUROR NUMBER SEVEN: I do not.

24 THE COURT: Juror Number Eight?

25 JUROR NUMBER EIGHT: No.

1 THE COURT: Juror Number Nine, do you disagree?

2 JUROR NUMBER NINE: I do not.

3 THE COURT: Juror Number Ten, do you disagree?

4 JUROR NUMBER TEN: I do not.

5 THE COURT: Juror Number Eleven, do you disagree?

6 JUROR NUMBER ELEVEN: I do not.

7 THE COURT: And, Juror Number Twelve, do you
8 disagree?

9 JUROR NUMBER TWELVE: I do not.

10 THE COURT: All right. Thank you. Having taken a
11 poll to--of the jurors as to whether there's agreement with
12 the--or any disagreement with the statement of the
13 foreperson, I have a follow up question for you. I'm not
14 asking any juror to tell me where you stand on any of the
15 counts of the indictment. My question is, without telling
16 me where you stand, Juror Number One, do you believe that
17 there is a reasonable probability that the jury could reach
18 a unanimous verdict if you went home for the weekend and
19 came back on Monday to continue your deliberations?

20 JUROR NUMBER ONE: I'm not sure of the question.

21 THE COURT: It would just be a yes or a no. I'll
22 repeat it. Do you believe there is a reasonable probability
23 that the jury could reach a unanimous verdict on one or more
24 of the counts if you had the weekend off and came back for
25 further deliberation on Monday?

1 JUROR NUMBER ONE: I do not.

2 THE COURT: All right. Juror Number Two, your
3 answer to that?

4 JUROR NUMBER TWO: No.

5 THE COURT: Juror Number Three?

6 JUROR NUMBER THREE: No.

7 THE COURT: Juror Number Four?

8 JUROR NUMBER FOUR: No.

9 THE COURT: Juror Number Five?

10 JUROR NUMBER FIVE: No.

11 THE COURT: Juror Number Six?

12 JUROR NUMBER SIX: No.

13 THE COURT: Juror Number Seven?

14 JUROR NUMBER SEVEN: I do not.

15 THE COURT: Juror Number Eight?

16 JUROR NUMBER EIGHT: No.

17 THE COURT: Juror Number Nine?

18 JUROR NUMBER NINE: No.

19 THE COURT: Juror Number Ten?

20 JUROR NUMBER TEN: No.

21 THE COURT: Juror Number Eleven?

22 JUROR NUMBER ELEVEN: No.

23 THE COURT: Juror Number Twelve?

24 JUROR NUMBER TWELVE: No.

25 THE COURT: All right. The Court finds, based on

1 the jurors' answers to my questions that there is no
2 alternative to the declaration of--or to a determination by
3 the Court that the jury is deadlocked and will be unable,
4 based on further--any further deliberations to deliberate to
5 a verdict that would be unanimous and therefore I declare a
6 mistrial in the case.

7 The jury's duties are completed. On behalf of the
8 parties and the Court, let me thank you for your very hard
9 work and I excuse you as jurors. Please return to your jury
10 room. I would like to come back personally and thank you
11 for your service and I'll be in just in a moment. Please
12 accompany the main jurors. That was directed to the
13 alternates. Thank you.

14 (Jury out 4:44)

15 THE COURT: Does the Government wish to place
16 anything on the record at this time?

17 MR. DOUGLAS: No, Your Honor.

18 THE COURT: Does the defendant?

19 MR. CARR: No, Your Honor.

20 THE COURT: All right. In light of my declaration
21 of a mistrial, Mr. Laurita, you should understand that the
22 Government is free to prosecute the case again, bring the
23 case for trial. That's a decision the Government will make,
24 not anything I will do.

25 Counsel, I'm going to go back and just thank the jury

1 for their service. In light of the circumstances I do not
2 intend to inquire of them any further, just to give them my
3 thanks. Thank you very much.

4 (Trial concluded at 4:45 p.m.)

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6
7 CERTIFICATE

8 I, Linda L. Bachman, Official Reporter of the United
9 States District Court for the Northern District of West
10 Virginia, do hereby certify that the foregoing is a true and
11 correct transcript of the proceedings had in the above
12 styled action on February 1 and 2, 2018, as reported by me
13 by stenomask.

14 I certify that the transcript fees and format comply
15 with those prescribed by the Court and the Judicial
16 Conference of the United States.

17 Given under my hand this 14th day of March, 2018.

18
19 /s/ Linda L. Bachman
20 Linda L. Bachman, CCR, CVR-M
21 Official Reporter, United States
22 District Court for the Northern
23 District of West Virginia
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